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Supreme Court of the United States

OCTOBER TERM, 1930

No. 141

HILARY HALBERT, JR., DOROTHY HALBERT RUBBLE, MILDRED HALBERT, A MINOR, ETC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 142

RICH HALBERT, A MINOR, BY FRED P. HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 143

VERNON SIDNEY HALBERT, A MINOR, BY BENJAMIN F. HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 144

SIDNEY E. HALBERT, A MINOR, BY SIDNEY SETH HALBERT, GUARDIAN AD LITEM, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 145

ROSE PEERS PICKERNOLL, MABEL PEERS WHITE, AND AMELIA PEERS ALDEN, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 146

LULU M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, ETC., ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 147

MARY BARICHIO PETIT AND NORRIS PETIT, ELLIS A. PETIT, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

It is evident that, in his own classification, the author, in designating Quaitso and Satsop, was making a distinction not made in the census.

The word "treaty" has two meanings:

> "1. The act of treating for the adjustment of differences, as for forming an agreement; negotiation.
>
> * * * * * * *
>
> 2. An agreement so made; specifically, an agreement, league, or contract, between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns, or the supreme power of each state; an agreement between two or more independent states; as, a treaty of peace; a treaty of alliance."
>
> (Webster's International Dictionary)

The word "treaty" doubtless has a third meaning—a meaning broad enough to include both the preceding negotiations and the writing—the signed treaty. It is often necessary in construing written contracts to consider prior negotiations in order to determine the meaning of the writing. Such necessity shows that the negotiation is, to such extent, a part of the contract. There is a clear instance of this in the present treaty. [310]

Article 3 of the treaty secures to the Indians the right to take fish at all usual and accustomed grounds and stations. Concerning this there can be no question, but, if there were discussions upon the treaty ground as to the location of these "usual and accustomed grounds and stations" that fact could be proved

in a suit under the treaty as showing what the agreement was in such respect. It is evident that the word "treaty" was, in the Act of March 4, 1911, used in this broader sense for in no other way (unless the word "and" occurring in the Act as one of the words "Quinaielt and Quileute" be construed as though it was the word "or") can the words "other tribes of Indians in Washington who are affiliated with the Quinaielt and the Quileute tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-fifth, eighteen hundred and fifty-six" be given any meaning.

The construction of the word "and" in writings as though it were the word "or" is some times required in order to give effect to the true meaning. (Bouvier's Law Dictionary, Vol. I, page 194, "and," citing United States v. Fish, 3 Wall. (U. S.) 445; Brown v. Furniture Co., 58 Fed. 286) The word "or" also appears in this act in the following:

> " * * * Secretary of the Interior * * * is hereby authorized * * * to make allotments * * * to all members of the Hoh, Quileute, Ozette *OR* other tribes of Indians in Washington, * * *" (Italics the court's)

The word "or," as it appears in the foregoing, doubtless should be construed to read as though it were the word "and."

It is, however, more reasonable to conclude that the word "treaty" in the Act was used in the broader sense including the written treaty and the negotiations in the preceding February. So construed the Chehalis, Cowlitz and Chinook, who were upon the treaty

ground, were affiliated with both the Quinaielts and Quillehutes in the treaty. [311] While perhaps not full brothers with them in this matter they can be said to have been affiliated with them in the treaty without straining the words of the Act. The Solicitor, in concluding his opinion, says:

> "The Indian tribes along the Pacific Coast of Washington, described as "fish-eating Indians," are more or less affiliated, although divided into numerous tribes or bands."

Is it not in this wider sense that the word "treaty" is used in Section 10, Article I of the Constitution of the United States, providing:

> "No state shall enter into any treaty, alliance, or confederation * * *"?

It has been contended in these cases that in the absence of an adoption by the tribe, approved by the Secretary, recognition by representative members of the tribe of membership in the tribe was necessary to the allotment right. While recognition by representatives of the Quinaielt and Quillehute tribes of membership or rights to allotment, being against interest, would be most persuasive, if not controlling, yet, insofar as the Chehalis, Cowlitz and Chinook are concerned it is not a sine qui non, for the headmen of the Quinaielt and Quillehute tribes can not be expected to have any peculiar knowledge concerning the membership of these other tribes here in question which—other than the Cowlitz—have no tribal organization. If they had the court could look to it in determining a question of tribal recognition.

Cases No. 299, 300, 301 and 302.

In the Complaints in these four cases it is alleged that plaintiffs are the children of four brothers. In case No. 300, it is alleged that plaintiff resides with his father and mother upon the Quinaielt Indian reservation and that [312] they have so resided for many years. In each case it is alleged that plaintiffs and the fathers of each were born and have lived all of their lives and now live in Grays Harbor county, Washington (the county in which substantially all of the Quinaielt Indian reservation lies), and that they have lived and associated and affiliated with the Quinaielt Indians during that entire period. In the three last numbered cases it is alleged that plaintiffs, who sue through their guardian ad litem, now each resides with his father. In each of the four cases it is alleged that the father has been duly enrolled and allotted on the Quinaielt Indian Reservation; that the paternal grandmother and four paternal uncles and other persons more distantly related to plaintiffs have received allotments upon said reservation.

Defendant admits that the father of each of the plaintiffs in said suits is enrolled and allotted upon the Quinaielt Indian reservation and that the other relatives of plaintiffs have been allotted on the reservation as alleged.

The major contention of defendant in these cases is that plaintiffs are to be classified as Indians of the "Upper Chehalis" and not of the "Lower Chehalis," it being admitted by the defendant upon the trial that if of the "Lower Chehalis" they were entitled to allotments.

The great-grandmother of the plaintiffs, an Indian woman, lived, it may be assumed, on the upper Chehalis river. Her daughter, (whose father was a white man), the grandmother of plaintiffs, was born in the Upper Chehalis Indian settlement of Oakville, which is about thirty miles from Grays Harbor. This daughter married a white man and they resided for many years and until her death near Hoquiam on Grays Harbor, about twenty-five miles from the Quinaielt Indian reservation. [313] The Handbook of American Indians, Bureau of Ethnology, Bulletin No. 30, Part I, page 569, describes Hoquiam as "a Chehalis Village." There was undisputed testimony that the grandmother lived in the Indian village. The duration of such residence is not shown. The Indian Agency is now located at Hoquiam.

There was born to plaintiffs' grandmother, of this union, four sons. They were all born at Hoquiam prior to 1886. They, with their families, have lived in and about Hoquiam throughout their lives associating with other Indians. The plaintiffs are the children of these four sons, their mothers being white.

It being admitted by the defendant that the plaintiffs are Indians and the evidence showing that they are Chehalis Indians, because of the conclusion already reached upon the main question in these cases, the court does not find it necessary to determine whether they are Upper or Lower Chehalis.

The plaintiffs in these cases are entitled to allotments.

Cases No. 312, 324, 325 and 326.

In the Complaints it is alleged that the plaintiffs in these four cases are related in a manner similar to that in the first four cases considered, that is, each is the child of one of a family consisting of a sister and her three brothers.

In case No. 312 it is alleged that the plaintiffs are minors of part Indian blood and, with the exception of Norma C. Elliott, were born and reared in Wahkiakum County, Washington; that the family there made its home the greater part of their lives; that the father and mother of plaintiffs are enrolled and allotted Indians on the Quinaielt Indian [314] reservation; that the father, guardian ad litem of the plaintiffs, is a fisherman fishing in the Columbia River on both banks thereof, at present making his home at Astoria, Oregon until such time as he shall remove to the Quinaielt reservation where he and the mother of said minor children have been recently given an allotment of land; that the maternal and paternal grandmother of plaintiffs and fifteen maternal uncles and aunts of plaintiffs and numerous cousins and more distant relatives have been recognized by defendant and enrolled and allotted. The foregoing allegations are admitted by the defendant.

In case No. 324 it is alleged that the father of plaintiffs is an enrolled and allotted Indian on the Quinaielt Indian reservation; that plaintiffs were born and reared in Wahkiakum County at the Indian settlement of Dahlia; that the father and all of the plaintiffs have at all times since their birth continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated

and affiliated tribes and bands of Indians, and are fish-eating Indians of the Pacific Coast; that the defendant has recognized, enrolled and allotted not only the father of plaintiffs but their paternal grandmother and eight paternal uncles and aunts. These allegations are admitted by the defendant.

In case No. 325 plaintiffs allege they are minor persons; that their father is Charles G. Elliott; that he is a duly enrolled and allotted Indian on the Quinaielt Indian reservation; that all of the plaintiffs were born and reared in Wahkiakum County, Washington and now reside therein at the Indian settlement of Dahlia; that Charles G. Elliott and all of the plaintiffs have at all times since their birth [315] continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated and affiliated tribes and bands of Indians and are fish-eating Indians of the Pacific Coast. All of the foregoing is denied by the defendant except that defendant admits Charles G. Elliott was enrolled and allotted land on the Quinaielt Indian reservation by decree of this court.

Plaintiff further alleges that defendant has recognized many members of Plaintiff's family and has enrolled and allotted many members of said family in addition to plaintiffs' father, being their paternal grandmother and eight paternal uncles and aunts. These allegations are admitted by the defendant.

In case No. 326 the Complaint alleges that plaintiffs are of part Indian blood; that four of them are over twenty-one years of age and the remaining two are minors. These allegations the defendant admits.

It is further alleged in the complaint that the

mother of plaintiffs is a duly enrolled and allotted Indian of the Quinaielt Indian Reservation and that all of the plaintiffs were born and reared in Wahkiakum County, Washington and reside therein at the Indian settlement of Dahlia, with the exception of Mary Henry Hagen, who now resides at Hoquiam in Grays Harbor county; that the plaintiff Louise E. Henry and all of the plaintiffs herein have at all times since their birth continuously lived as Indians and associated and affiliated with the Quinaielt Indians and associated and affiliated tribes and bands of Indians, and are fish-eating Indians of the Pacific Coast. The defendant admits that the mother of plaintiffs is named Louise E. Henry and that she is an enrolled and allotted Indian on the Quinaielt Indian reservation. The other foregoing allegations are denied. [316]

In the complaint it is further alleged by the plaintiffs that the defendant has recognized many members of plaintiffs' family and has enrolled and allotted many members thereof, among whom are not only the mother of plaintiffs, but the maternal grandmother and eight maternal uncles and aunts. These allegations are admitted by the defendant.

In the complaint it is further alleged that plaintiffs are full blood brothers and sisters. This allegation is denied.

The facts in these four cases do not distinguish them from the decision reached by this court in case No. 272-E of the causes in this court. In that case the court decided that the mother of the plaintiffs in the present case No. 326 and the fathers in the other three cases and Agnes Elliott, the grandmother of

plaintiffs in all such cases, were entitled to allotments on this reservation. In that case the court called attention to the fact that the tribal council of the Quinaielt Indians convened on April 4th, 5th and 6th, 1912, considered not only the adoption of Agnes Elliott and her four children but twenty-eight of her grandchildren. The record of that proceeding in this particular is as follows:

> "* * * * The case of Agnes Elliott's grandchildren was next presented to the council. Agnes Elliott, who has been adopted into the tribe in an earlier part of the council proceedings, appeared and applied for her grandchildren. In as much as this woman was adopted, the members wished to vote on her grandchildren without discussion.
>
> The Superintendent presented the following for adoption: * * * * * Vote: 34 for adoption, and 0 for rejection."

The names of plaintiffs in the present four suits are placed below in the left-hand column and the names of certain of those of the grandchildren of Agnes Elliott shown by the adoption record of the council to have been voted upon favor- [317] ably. are placed in the column to the right:

(Case No. 312)

Lulu M. Elliott,	Louella Elliott, age 4 years,
Sophie M. Elliott,	
Carolyn M. Elliott,	
Marion E. Elliott,	
Emma S. Elliott,	
Norma C. Elliott.	

No names corresponding to the plaintiffs Sophie M. Elliott, Carolyn M. Elliott, Marion E. Elliott, Emma S. Elliott and Norma C. Elliott appear in the adoption proceedings.

(Case No. 324)

Edna May Elliott,	Edna Elliott, age 14 years,
Ruth G. Elliott,	Ruth Elliott, age 9 years,
William H. Elliott,	William Elliott, age 6 years,
John G. Elliott,	Jonathan Elliott, age 4 years,
Frank L. Elliott,	
Jewell M. Elliott.	

No names corresponding to the plaintiffs Frank L. Elliott and Jewell M. Elliott appear in the adoption proceedings.

(Case No. 325)

Chas. G. Elliott, Jr.,	Charles Elliott, age 1 year,
Anna Marie Elliott,	Anna Elliott, age 3 years,
Henry Elliott,	
Ralph G. Elliott,	
Frances Elliott.	

No names corresponding to the plaintiffs Henry Elliott, Ralph G. Elliott and Frances Elliott appear in the adoption proceedings.

(Case No. 326)

Agnes Rubens,	Agnes Henry, age 20 years,
Louise Henry Peterson,	Louise Henry, age 15 years,
Mary Henry Hagen,	Mary Henry, age 12 years,
Chris Henry, Jr.,	Chrissie Henry, age 6 years,
Christine Henry,	Christine Henry, age 2 years.
June Henry.	

No name corresponding to the plaintiff June Henry appears in the adoption proceedings.

The court finds that the names placed opposite one another above designate the same individuals. It has been sixteen years since this action was taken by the tribal council. The [318] court concludes that the plaintiffs whose names do not appear upon the record of adoption were born since the action taken by this council. If such is not the fact evidence may be offered upon that point at the settling of the decree.

The plaintiffs in these cases are entitled to allotments.

Cases No. 320 and 321.

In these two cases the minor plaintiffs are alleged in the one case, with the exception of Oscar Brignone, to be the children of the plaintiff, Mary Barichio Petit, and in the other case to be the children of the plaintiff, Dewey Barichio, a brother of Mary Barichio Petit. In each case plaintiffs allege they are of part Indian blood, which allegation is admitted in the answer of the defendant.

It is further alleged in the Complaint that the plaintiff, Mary Barichio Petit, is the aunt of the plaintiff, Oscar Brignone; that Mary Barichio Petit is a Quinaielt Indian by blood and the wife of Paul Petit, the guardian ad litem of the minor plaintiffs, who is a duly enrolled and allotted Indian on the Quinaielt Indian Reservation; that all of the plaintiffs were born and reared and now live in Pacific County, Washington, near Bay Center, in this district, and have always lived, associated and affiliated with the Indians of this locality and other Quinaielt Indians and have always been considered as Indians in this locality; that Paul Petit has recently been allotted upon the Quinaielt Indian Reservation and expects

to make his home thereon with his family when the land has been cleared and a home established thereon.

It is further alleged that many members of the family of plaintiffs have been recognized and allotted upon the Quinaielt Indian Reservation; that not only has Paul Petit been allotted, but also Frank G. Barichio, father of the [319] plaintiff, Mary Barichio Petit, and grandfather of her two children, plaintiffs herein, the grandmother of plaintiff Mary Barichio Petit, an uncle and aunt and cousin of the plaintiff Mary Barichio Petit, and many other relatives of plaintiffs on their father's side. These allegations are in the answer denied.

It is alleged in this complaint that the plaintiff Dewey Barichio is the father of the other minor plaintiffs, Leda A., Romie D. and Andrew B. Barichio; that their mother, the wife of plaintiff Dewey Barichio, is a duly enrolled and allotted Quinaelt Indian; that all of the plaintiffs were born and reared and now live in Pacific County, Washington, near Bay Center, within this district, and have always lived, associated and affiliated with the Indians of this district and other Quinaielt Indians and have never been considered except as Indians in this locality; that the mother of the minor plaintiffs, wife of plaintiff Dewey Barichio, has been recently allotted within the Quinaielt Indian Reservation and expects to make her home thereon with her family when the land has been cleared and a home established thereon. These allegations are by the defendant in its answer denied.

It is further alleged in the complaint that the plaintiffs have many members of their family allotted upon

the Quinaielt Indian Reservation, not only the mother of the minor plaintiffs, wife of the plaintiff Dewey Barichio, but the father of the plaintiff Dewey Barichio and that defendant has recognized and allotted many other members of plaintiffs' family upon said reservation. These allegations are by the defendant in its answer admitted.

There is no evidence that Indians, other than the Chehalis, Chinook and possibly the Quinaielt, occupied the region about Bay Center before the treaty. The defendant [320] contends that the Quinaielt did not. It is certain that they visited it regularly and frequently. If the manner of living of these tribes be kept in view the testimony can, to a great extent, be reconciled. These Indians did not abide in one place. They moved about following the fish, the game, the fur-bearing animals, gathering berries in one or more places and camas in others and finding shelter in the winter elsewhere. Such barter as they carried on before the coming of the whites must have been with the Indians of the Interior by way of the Columbia River to the mouth of which the Coast Indians must have gone for that purpose, as in the nature of things they would be more skillful in handling canoes upon the ocean than the Indians of the interior. In going to the Columbia to trade and fish or for other purposes the Quinaielt Indians would pass Shoalwater Bay. The mixed character of the Indian settlement on Shoalwater Bay is, in part, no doubt accounted for because of the existence there of oyster beds. Owing to this roaming there could be no great tenacity in any local tenure of theirs. One who had opportunities to observe the Indian life

which we of the present generations have not had suggested, if he did not describe, the nature of their title or claim to the land when, in substance, he said "They have seen it from the mountain; they have passed it in the chase." The plaintiffs are fish-eating Indians of the Pacific Coast. The Indian blood is predominant in their ancestors. They and their families and the families of their ancestors for four generations have resided on Shoalwater Bay, the northerly part of which is about forty miles south of the Quinaielt reservation. Members of this family through three generations have been allotted on the Quinaielt Indian Reservation. The grandfather of plaintiffs, other than of Oscar Brignone, says [321] his allotment was made without his adoption.

There is and has been since before the treaty an Indian settlement on Shoalwater Bay. By Executive Order of September 22, 1866, a reservation of one-half square mile was created here, described as "occupied by Shoalwater and Chehalis." (Kappler, Vol. I, page 924.)

The white witness, Bush, sixty-one years old, who has lived at Bay Center on Shoalwater Bay for fifty-one years and says he has known most of the Indians around Shoalwater Bay for fifty years, describes them as an aggregation of the remnants of tribes; that there were Chinooks, and Willopahs, the latter a tribe of the Chinook, (Handbook of American Indians, Part II, Page 955) Chehalis and Satsop, the latter a tribe, the easternmost of the Lower Chehalis (idem, p. 470).

The defendant contends that the plaintiffs are detached Indians, that is, members of no tribe.

The witness, Johnson, testifies that other than the

Cowlitz, these tribes had no organization. The witness, Bush, states that there is no tribal organization but the last few years there has been sort of a business organization.

It is probable that the plaintiffs should be classed as Chehalis, as defendant has classed their common ancestor, but on account of the conclusion reached it is not necessary to determine whether these plaintiffs should be classified as Chehalis, Chinook or Quinaielt. The preponderance of the evidence is that they and their Indian ancestors are Indians of a settlement of Chehalis, Chinook and Quinaielts.

The evidence establishes their right to allotments.

Case No. 313.

In the complaint in this case it is alleged that the plaintiff is a person of part Indian blood. This is not denied by the defendant in its answer. [322]

It is further alleged that the plaintiff is a minor child, two years of age, the daughter of Frances James Payne, a duly enrolled and allotted Indian on the Quinaielt Indian Reservation; that plaintiff was born in Aberdeen, Grays Harbor County, Washington, within this district, and has continuously resided either at Aberdeen or Taholah, Grays Harbor County, Washington, within this district; that the father of this plaintiff is a white man named Frank Payne. The defendant in its answer denies that plaintiff was ever a resident of Taholah (which is on the Quinaielt Indian Reservation). The other allegations are admitted.

It is further alleged in the complaint that Frances James Payne, the mother of plaintiff is a duly en-

rolled Quinaielt Indian allotted on said reservation; that the mother of plaintiff's mother is a duly enrolled and allotted Indian on the Quinaielt Reservation; that plaintiff's mother has five sisters enrolled and allotted on said reservation and has many nieces, nephews, uncles, aunts, cousins and more distant relatives allotted and enrolled upon said reservation. These allegations are in the answer admitted by the defendant.

It is further alleged in the complaint that the mother of plaintiff owned and maintained a home at Taholah upon the reservation long before the birth of plaintiff; that she owned and maintained this home during the past two years and still owns and maintains it where since the birth of the plaintiff she has spent over one-half of her time constantly associating and affiliating with the Quinaielt tribe of Indians. The defendant in its answer denies these allegations.

The facts in this case are virtually agreed upon by the parties. Plaintiff's father is a white man who married plain- [323] tiff's mother, an Indian, three years "or a little better" before the trial of this case in January, 1928, long subsequent to the Act of June 7, 1897.

It is admitted that the mother, if present, would testify that she owned and maintained a home at Taholah, upon the Quinaielt Indian Reservation, long before the birth of the plaintiff; that she owned and maintained this home during the two years preceding November 10, 1927 and that ever since the birth of the plaintiff on January 9, 1925 she spent over one half of her time at said home constantly affiliating and associating with the Quinaielt tribe of Indians.

Witness Harry Shale, headman of the Quinaielt tribe, testified that he knew plaintiff's mother; that she was married and moved from Taholah to Aberdeen where she and her husband live and that she has not been back; that he has not seen the plaintiff; plaintiff's father works in a mill at Aberdeen, some twenty-six or twenty-seven miles from the South border of the Quinaielt Indian Reservation; that he had a house in Aberdeen before the child was born where the mother lived before and since the child was born; that since the marriage he has seldom seen her at Taholah; that she made a few trips there to visit her mother; that she lived practically all her life, until she married plaintiff's father, at Taholah.

Another headman of the Quinaielts testified that plaintiff's mother has not been at Taholah since she was married.

There is no substantial difference between the facts in this case and that of Eugene Pape in Case No. 218-E decided by this court except that while Pape and his parents resided at Tacoma, outside of the territory formerly occupied by these Indians, in the present case the parents reside and have resided at Aberdeen on Grays Harbor, within the terri- [324] tory formerly occupied by the Chehalis, but that fact alone is not sufficient to distinguish the cases and the plaintiff has not maintained the burden of showing that his status is other than that of his father, white.

Plaintiff is not entitled to an allotment.

Case No. 306.

It is alleged in the complaint in this case that plaintiff is a person of part Indian blood, over the age of

twenty-one years, at present residing in Wahkiakum County, Washington. The defendant in its answer admits that the plaintiff is a person of part Indian blood but denies the other foregoing allegations.

The complaint further alleges that plaintiff has been all of his life recognized as a member of the Quinaielt tribe and has associated and affiliated with the Quinaielt and affiliated and associated bands and tribes of fish-eating Indians of Western Washington living along the Pacific Coast and for the past fourteen years has lived the greater portion of the time upon the Quinaielt Indian Reservation. These allegations are by the defendant denied in its answer.

The complaint alleges that the defendant has recognized other immediate members of the plaintiff's family as Quinaielt Indians and has allotted them upon the Quinaielt Indian Reservation, including his full blood sister, seven nieces and five grandnieces and nephews and that plaintiff has other and more distant relatives allotted upon said reservation; that plaintiff is a widower; that his deceased wife was a recognized member of the Quinaielt Indian tribe and numerous members of her family are recognized members of that tribe and were allotted land upon said reservation. These allegations are by the defendant admitted in its answer.

The plaintiff in this case, an Indian who it is stated [325] was born in 1861, is deaf and for that reason a statement in form an affidavit but unsigned, (Exhibit 14) was admitted as a statement of that to which he would testify. It is as follows:

* * * * * * *

"I am the plaintiff above named; that I am

totally deaf and unable to hear or distinguish sounds; that I can read lips to a slight extent but not in a very reliable way and will be wholly unable to testify excepting in answer to written interrogatories which I can read and write the answers to them.

Affiant says that the annexed statement marked Exhibit A is a list of Indians who are related to me and who have been allotted upon the Quinaielt Indian Reservation. Affiant further says that his mother was Ellen Pellard and she was a full blood Indian woman who was reared and lived all her life at Bay Center, Washington; that she died about 27 years ago, prior to any allotments upon the Quinaielt reservation; that his mother had another child, Adeline Lohre, who died about a year ago and who was allotted upon the Quinaielt reservation, and that said Adeline Lohre had seven children all of whom were allotted on the Quinaielt reservation.

Affiant further says that all his life he has lived in the immediate neighborhood of the Pacific Ocean from the mouth of the Columbia River to the Quinaielt reservation; that all my life I have followed the occupation of a fisherman and still follow it; *thatin* the year 1911 I removed to the Quinaielt reservation at Taholah and lived there for a number of years, making frequent trips to the fishing grounds in Grays Harbor and Bay Center and other places along the Coast and returning to the Quinaielt reservation and fishing in the river there. That I have constantly associated and affiliated with the In-

dians on the Quinaielt reservation and am known to virtually all of them; for some years I was manager of the Quinaielt Indian baseball team composed of Indians on the Quinaielt reservation and as late as the year 1925 was manager of said team, and Robert Sampson, a full blood Quinaielt Indian allotted on the reservation, was the treasurer of this organization.

That some years ago I was engaged in improving the fishing locations along the Quinaielt river driving stakes and piles into the river so that I and the other Quinaielt Indians could string our nets into the river for fishing therein; that this work was gratuitous and I never received any pay for it, that the lumber used was purchased from the Indians and the only funds I received were for the purpose of reimbursing me for the payment for the lumber and the actual expense in connection with the use of the pile driver.

That all my life I have constantly associated and affiliated with the Indians who now live on the Quinaielt river who have come down to Bay Center and the [326] various fisheries along the Pacific Coast and I have associated with them there and have fished with them at these places and also on the Quinaielt reservation. That all of the 48 persons named in Exhibit A hereto attached are blood relatives of mine. That to my knowledge no Indian of the Quinaielt reservation has ever questioned my right as a Quinaielt Indian, and all of them whom I talked with have assured me that I am one of them and entitled to my rights on this reservation.

That I have never received an allotment of

land upon any reservation or upon the public domain. That I have attended such tribal councils as have been held in recent years and have voted at such councils with the full approval and consent of the other Quinaielt Indians.

That I was married to an Indian woman named Tenino Barichio who is now deceased, she was the sister of Frank Barichio who is now living, and is allotted upon the Quinaielt reservation. Her entire family were Quinaielt Indians and allotted upon the Quinaielt reservation. That my father was a Hudsons Bay trapper and voyager who came from Canada in the early days with the Hudsons Bay Company. He was a French Canadian and I think had some Indian blood as most of these French Canadian Hudsons Bay men had.

My sister, Adeline Lohre, a Quinaielt allottee, was married to a Quinaielt Indian who was allotted on the Quinaielt reservation. I had one brother named Henry Peers, now deceased, who was married to Julia Ducheney who died long ago but who was the sister of Agnes Elliott, also allotted on the Quinaielt reservation, as were all of her children.

The small tribe of Indians living on the Quinaielt reservation, those living at Grays Harbor, and those living at Shoalwater Bay, all speaking the same language, are all intermarried and interrelated and when I was a young man growing up in this country they would live part of the time on the Quinaielt reservation, part of the time on Grays Harbor near Westport and part of the time at Shoalwater Bay where Bay Center and

South Bend now are. No distinction was drawn between the various tribes at that time, they were all one people."

The "Exhibit A" mentioned in the affidavit does not appear in the files in this case.

Mr. Bush, mentioned above, testifies that it is his impression that plaintiff's mother was a full blooded Indian born within the Lower Chehalis, married at Chinook where plaintiff was born or taken when young; that his mother moved (from Chinook into Bay Center) thirty-five or forty years ago.

Defendant's witnesses, Billie Mason (Chief Mason) and [327] William Garfield testified that defendant is a Chinook. Upon the trial it is admitted that Mason, Garfield and Samson Johns, leading men of the Quinaielts, would testify that plaintiff was not a Quinaielt and not associated or affiliated with the Quinaielt as a tribe.

It is shown—in fact admitted by the defendant—that plaintiff's mother was an Indian; that his father was a white man and that they were married prior to June 7, 1897; that plaintiff was born in 1861.

It is contended that plaintiff is not entitled to an allotment because neither he nor his mother were ever recognized as members of the Quinaielt tribe; that, as stated, plaintiff's father was a white man; concerning his mother it is defendant's claim that her father was a full blood Chinook and that her mother is variously claimed to have been (a) Full blood Chinook (b) Half Chinook and half Quinaielt (c) Full blood Quinaielt; that the best evidence indicates she was a full blood Chinook.

As in cases number 320 and 321 it is not necessary to determine whether plaintiff's Indian blood was that of a Quinaielt or Chinook or both. His history, manner of life, parentage and association show him to be an Indian of the fish-eating Indians of the Pacific Coast. His life-long association shows his recognition by the members belonging to those tribes at Bay Center and Chinook, if not at Quinaielt. He is entitled to an allotment.

Case No. 307.

Plaintiffs allege that they are persons of part Indian blood, members of the Quinaielt tribe; that they reside in the State of Washington and within this district. The defendant denies that plaintiffs are members of the Quinaielt tribe but admits the other allegations. [328]

Plaintiffs allege that their father was named Henry Peers; that he is now deceased; that he was an Indian and a member of an associated and affiliated band of Indians of the Quinaielt Indian tribe and a fish-eating Indian of the Pacific Coast in Western Washington; that the mother of plaintiffs was named Judith Ducheney; that she died long ago; that she was an Indian and a recognized member of the Quinaielt tribe of Indians. The defendant admits that Henry Peers was the father of the plaintiffs; denies that he was a member of an associated and affiliated band of Indians of the Quinaielt tribe; admits that he was a fish-eating Indian, but denies that he was a member of any tribe entitled to rights on the Quinailt Reservation. The defendant admits that the mother of plaintiffs was Judith Ducheney but denies that she was a member of the Quinaielt tribe of Indians.

Plaintiffs allege that defendant has recognized many members of plaintiffs' family as belonging to the Quinaielt Indian tribe and has allotted many members of such family upon the Quinaielt Indian Reservation—a paternal aunt and seven of her children, a maternal aunt and nine of her children—and that plaintiffs have numerous other relatives allotted upon the Quinaielt Indian Reservation; that the plaintiffs, Amelia Peers Alden and Rose Peers Pickernol, were born, reared, and now live in Pacific County, Washington; and that plaintiff, Mable Peers White, was born and reared in Wahkiakum County, Washington, within this district. The foregoing allegations are denied.

Plaintiffs are nieces of the plaintiff in the preceding case, Archie Pellard, viz: he is their half uncle.

The evidence in these cases is meagre which is probably explained by the fact that counsel concluded that the decision would be controlled by that reached in the related cases, [329] No. 306, 312, 324, 325 and 326.

The decree will be for plaintiffs.

Case No. 315.

In case No. 315 it is alleged by plaintiffs that they are a brother and three sisters; that their fathers were white men; one deceased and one living; that the mother of the plaintiffs is Kate Walkowsky Weiss, an enrolled and allotted Indian of the Quinaielt tribe of Indians; that all of the plaintiffs were born, reared and now live in Pacific County, Washington; that the mother of the plaintiffs has been but recently allotted on the Quinaielt Indian Reservation and expects to make her home upon such reservation when the land

is cleared and a home established; that defendant has not only enrolled and allotted plaintiff's mother but seven of their brothers and sisters and many other members of their family more distantly related.

The defendant admits that plaintiffs are of part Indian blood; admits the enrollment and allotment of the mother, brothers and sisters of plaintiffs. The following facts were also admitted:

"(1) That Kate Walkowsky, the mother of Virginia Walkowsky, Alvin Walkowsky, Catherine Walkowsky and Edna Weiss, minors, was born September 1, 1874; that her Indian name was Toh-toh-atl, and that she is a full blooded Indian.

(2) That Kate Walkowsky was born at Oysterville, Washington, on Shoalwater Bay.

(3) That said Kate Walkowsky on January 9, 1893, married John Walkowsky, a white man.

(4) That the following are the names of the children, and the dates of their birth, which were born to said Kate Walkowsky and John Walkowsky:

a. Albert Walkowsky, born March 31, 1894
b. Louise Walkowsky, born August 1, 1895
c. Frank Walkowsky, born April 9, 1897
d. Ida Walkowsky, born March 3, 1899
e. Grace Walkowsky, Griggs, born June 28, 1900
f. Leonard Walkowsky, born October 26, 1904
g. Rose Walkowsky, born June 16, 1906

h. Kenneth Walkowsky, born January 19, 1909 [330]
i. Virginia Walkowsky, born August 4, 1912
j. Alvin Walkowsky, born May 17, 1914
k. Catherine Walkowsky, born August 26, 1916

(5) That all of the above named children with the exception of Virginia, Alvin and Catherine Walkowsky, have received allotments upon the Quinaielt Reservation.

(7) That the plaintiffs above, Virginia Walkowsky, Alvin Walkowsky and Catherine Walkowsky, were born to the said Kate Walkowsky and John Walkowsky after the adoption of Kate Walkowsky and her eight children by the Quinaielt tribe of Indians. That the said Kate Walkowsky, after the birth of the above named Catherine Walkowsky, separated from the said John Walkowsky and divorced him and married one Robert Weiss, a white man, by whom she had one child, Edna Weiss, one of the plaintiffs above named, born on the 18th day of February, 1919.

(8) That the mother of Kate Walkowsky was an Indian named Spieten who was a member of the Wynooche band of Indians in the State of Washington. That her father was an Indian named Tatl Tohe, and he was a full blooded Chinook Indian."

The Wynooche band of Indians belongs to what has been referred to in the trial as the "Lower Chehalis." (See Handbook of American Indians, Part II, p. 932, "Wenatchi.")

There is no testimony indicating that the status of the mother of the plaintiffs has in any wise changed since her adoption. The children born, as were the three Walkowsky children, after such adoption, would take the tribal status of the mother, without their adoption, unless because these children were born subsequent to the Act of June 7, 1927, they are, because of such enactment, though of a marriage of their parents prior to that date, to be given the status of the father and not the mother's status by adoption, but even if this be conceded they are entitled to allotments for the reason that the Act of June 7, 1897 so provided. The plaintiff, Edna Weiss, was born of a marriage between her mother and a white man which marriage was long after June 7, 1897. The Court of Appeals in the case of Pape v. United States (19 Fed. (2d) 219) at page 220, said: [331]

> " * * * (2) That statute, although it conferred a right upon the children of an Indian woman whose condition brought her within the terms of the act, did not bestow such right upon children of marriages contracted after passage of the act, nor upon the children of a mother not recognized as one of the tribe at the time of her marriage or death. * * * "

The plaintiff Edna Weiss is not entitled to an allotment.

Case No. 314.

It is alleged by the plaintiffs in the complaint that they are persons of part Indian blood and reside in Grays Harbor County, Washington, which allegations are not denied.

It is further alleged in the complaint that plaintiffs have always been recognized as Quinaielt Indians by such Indians; that they belong to the Lower Chehalis branch of the Quinaielt tribe; that they have associated and affiliated with the associated bands and tribes of fish-eating Indians of the Pacific Coast in Western Washington, and have for many years past made their home in immediate proximity to the Quinaielt Indian reservation. The defendant in its answer admits that plaintiffs have made their home in proximity to said reservation but denies the remaining of the foregoing allegations.

It is further alleged in the complaint that the plaintiff, Alvin Smith, is a Quinaielt Indian and the father of the plaintiff, Donald Smith; that the plaintiff Vivian Forden is the daughter of one Juanita Christoffson; that Alvin Smith, Eugene Smith, Juanita Christoffson and Robert Rolfson are the children of Lizzie Rolfson. The defendant, while in its answer denying that any of the plaintiffs are members of the tribe of Quinaielt Indians, admits the other of the foregoing allegations.

Plaintiffs are Lizzie Rolfson, her children and grandchildren. Lizzie Rolfson, born in 1870, is the daughter of [332] a white man and a Chehalis mother. She has been married three times, each of her husbands being white men, and has lived a great part of her life at and near Hoquiam on Grays Harbor. Her residence among and association with these Indians as well as the residence and association of her mother are sufficient to show her membership in the Chehalis tribe of Indians, in view of the fact that it has long had no tribal organization. She was

first married in 1887 at Montesano in Grays Harbor County and divorced ten years later. She was again married at Aberdeen, in Grays Harbor County, in 1902. This husband died in 1903. She was again married in 1907 at Portland, Oregon. Of the first marriage there was born the plaintiff, Eugene Smith, born in 1898 at Seattle and Alvin Smith. Eugene Smith was a soldier in the late war and both reside in San Francisco, where Eugene Smith is working in the post office; Plaintiff Juanita Severson (Christoffson), daughter of the second marriage, born in 1904 at Hoquiam and married at Olympia in 1918; Plaintiff Robert Rolfson, her son of the third marriage, born in 1909 at Newport, Oregon. The plaintiff Donald Smith is a grandson of the plaintiff Lizzie Rolfson, his father being Alvin Smith, who married at Hoquiam. The plaintiff Donald Smith was born at Billings, Montana in 1917, and also lives in California. The plaintiff, Vivian Forden is a granddaughter of the plaintiff Lizzie Rolfson, being a daughter of Juanita Severson, who married Forden, a white man.

The plaintiff, Lizzie Rolfson, is entitled to an allotment. The other plaintiffs, save Eugene Smith, Alvin Smith and Donald Smith, are not entitled to allotments, being children of white fathers, and, if it be conceded the mother should be classified as Indian, the marriages were after [333] June 7, 1897. (Pape v. United States, 19 Fed. (2d) 219); Walkowsky-Weiss, etc., v. United States, No. 315, supra.)

Eugene Smith and Alvin Smith, being children of an Indian woman, by blood and not by adoption, married to a white man prior to the Act of June 7.

1897, are entitled to allotments, not because they are Indians or recognized as Indians of the tribe, but because of the foregoing act. The act provides for such allotment when the mother "is at this time or was at the time of her death, recognized by the tribe."

While the mother, a Chehalis, has not been recognized by the Quinaielt and Quillehute tribes there could have been no further recognition of her by the Chehalis under the circumstances and condition of that tribe, being without tribal organization.

The plaintiff, Donald Smith, is not entitled to allotment because his father is, in all essentials, a white man, living the white man's life. Donald Smith has not been shown to have associated with the Chehalis in any way to imply recognition by them of his membership in that tribe. His situation is in no wise different from that of Mrs. Andrews and Mrs. Bent in the case of Oakes et al. v. United States, 172 Fed. 305, at 306 and 307, except that his Indian blood is through the father and not the mother.

Case No. 309.

It is alleged by plaintiffs in their complaint in this case that they are persons of part Indian blood, which defendant in its answer admits. Defendant denies that plaintiffs are of the Quinaielt or Quillehute or of any of the tribes affiliated with them in the Treaty of 1855-1856. (12 Stat. L. 971.)

Plaintiffs further allege in their complaint that Mary [334] Francis Provoe is an Indian, being a member of an associated and affiliated band of Indians of the Quinaielt tribe and a fish-eating Indian

of the Pacific Coast in Western Washington and is the mother of the remaining plaintiffs; that the father of said children, the husband of Mary Francis Provoe, is David Provoe, an Indian by blood. These allegations are by the defendant denied in its answer.

It is further alleged by the plaintiffs that they were born in Southwestern Washington and have resided in said locality their entire lifetime, all of which time said plaintiffs have continuously lived as Indians, associating and affiliating with the Quinaielt Indians and associated and affiliated bands and tribes of the Quinaielt Indian Reservation; that about the year 1912, in response to a notice sent out by the superintendent of the Quinaielt Indian Reservation, they appeared before the tribal council of said tribe at Taholah, upon said reservation, and were then and there recognized as belonging to and being a part of said Quinaielt tribe of Indians; that plaintiffs have many blood relatives living upon said reservation among whom are Mary Sampson Johns, Lafayette Kindred, Kate Kindred Thomas, Fannie Delamater, Isaac Bastian and Ida Gill. The defendant, for lack of information, knowledge or belief, denies the foregoing allegations.

At the time of trial it was stated that the plaintiff John W. Provoe, had died.

While the denials of the answer are sweeping in their nature and while the testimony in this case is more confusing than in the other cases, the controlling facts are not in doubt.

Defendant's witness, Roblin, the Allotting Agent on the Quinaielt Reservation, testified: (Pages 636-637 of the [335] transcript of testimony)

"A. At the time these applications were made, they were made by David Provoe who was then living, for and on behalf of himself and wife and children and several grandchildren not now in court and I investigated the family history of the applicants and at that time was told and the best information I could get was that David Provoe's mother was a Stikine Indian, that is, from the Stikine district of south Alaska and British Columbia. She had been brought down into this country and had been tribally adopted under the old customs of the Cowlitz tribe and had been amalgamated and become a member of the Cowlitz tribe and David Provoe had been born from a marriage contracted at that time in the Cowlitz country and was always considered and recognized as a Cowlitz Indian. The information given to me at that time as to Mrs. Provoe's family history—Mary Francis—was that she belonged to the Nisqualli tribe and that made the children part Cowlitz by adoption and part Nisqualli. My instructions were to report all the Indians in Western Washington that I found who had any claim against the Government and who were not enrolled at any agency. I reported on about 3000 of those, among them being the Provoe family and I listed them as belonging to the Cowlitz tribe."

Chief Mason, defendant's witness, testified:

"They (plaintiffs) are Cowlitz—I have heard."

On account of the conclusion reached by the court that Chehalis (Upper and Lower) and Cowlitz are

fish-eating Indians of the Pacific Coast within the meaning of the Executive Order of November 4, 1873, affiliated with the Quinaielt and Quillehute tribes in the treaty, under the act of March 4, 1911 it is not necessary, if the court finds plaintiffs to be either Upper Chehalis or Cowlitz, to determine definitely with which of them they should be classed. The Handbook of American Indians, supra, published in 1907, says of the Cowlitz:

> "Cowlitz. A Salish tribe formerly on the river of the same name in s. w. Washington. Once numerous and powerful, they were said by Gibbs in 1853 to be insignificant, numbering with the Upper Chehalis, with whom they were mingled, not more than 165. About 1887 there were 127 on Puyallup res., Wash. They are no longer known by *thisname*, being evidently officially classed as Chehalis." (Page 355, Part I.) [336]

The plaintiff Mary Francis Provoe, the mother of the remaining plaintiffs, is seventy-four years old. The treaty was signed seventy-two years ago. She was married in 1870. The preponderance of evidence shows that she was born in Black Lake, the source of the Black River, a tributary of the Chehalis. The Handbook of American Indians, supra, says of the Chehalis:

> "Chehalis. A collective name for several Salishan tribes on Chehalis r. and its affluents, and on Grays Harbor, Wash. * * *" (Page 241, Part I.)

Black Lake is three miles from Tumwater which

is at the mouth of the Deschutes. There was undisputed testimony in this case that the dividing line between the Nisqualli and the Chehalis was the Deschutes, which flows into the Sound at Tumwater and that Mrs. Provoe (the plaintiff Mary Francis Provoe) and descendants lived on the Chehalis side of the Deschutes. While it was said that she was a Nisqualli the evidence of that fact is far from convincing. It may be that the plaintiff was born within the territory which the Nisqualli relinquished by the Medicine Creek Treaty, as the treaty, respecting the part of the boundary of such territory effecting this matter, says:

> "* * * * to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; * * *" (Kappler, Vol. II, p. 662.)

The court can not take judicial notice of the location of "the coal mine" and there may be a point on the Skookum Chuck Creek, a line from which to some point on the summit of the Black Hills would pass to the west of Tumwater and the mouth of the Deschutes.

Mary Francis Provoe's father was a white man and her mother's father and mother Chehalis Indians of the Black River [337] and Black Lake region. She and the other plaintiffs have, throughout their lives, lived not far from the Chehalis, with the exception of Isabelle R. Rainey, who lived in Canada at one time. The length of her residence there is not shown. It is stated that "they burned out," upon which occur-

rence she evidently returned and has lived since that time in or near the country formerly occupied by the Chehalis.

Mary Francis Provoe's brother and his children have been allotted upon the Quinaielt Indian reservation. Her husband, the father of the other plaintiffs, was born on Cowlitz Prarie. He was adopted by the Cowlitz. There is no evidence as to the date and the court infers that it was before the birth of his children. He was a half blood—half French and half Stikine.

The witness, Pike Benn, whose father told him that he took Governor Stevens down the river (Chehalis) to the treaty ground, testified that Provoe's mother came from Canada. The plaintiff, Mary Francis Provoe, testifies:

"Q. To what tribe or band of Indians did he belong?

A. His mother came from the north.

Q. What do you mean by that?

A. From Stikine.

Q. From Alaska?

A. Yes.

Q. Any other blood than Stikine?

A. No, his father was a Frenchman; he worked for the Hudson Bay people.

Q. Your husband was half Stikine and half French?

A. Yes." (Transcript of testimony, p. 595.)

The greater part of the Stikine River is in British Columbia, but its mouth, Wrangell and Old Wran-

gell, are in Alaska. The Handbook of American Indians, supra, says of Stikine:

> "Stikine. A Tlingit tribe on and near the mouth of the river which bears its name. * * * Their winter town is Katchanaak (Wrangell); their ancient village was Kahltcatlan (Old Wrangell). Shake's Village, Shallyany's Village, and Shustak's Village are also mentioned. * * * [338] (Page 636, Part II.)

The preponderance of evidence, therefore, is that the mother of David Provoe was an Alaska Indian and not a British Columbia Indian but in view of his adoption by the Cowlitz that question would seem to be of little, if any, importance.

The fact that a small reservation was created in 1886 in the former territory of the Chehalis does not effect the questions in issue. This reservation is described in Kappler, Vol. I, p. 901, as follows:

> "Chehalis Reserve (In Puyallup Agency); occupied by Chinook (Tsinuk), Clatsop and Chehalis; area, three-fourths of a square mile."

Official correspondence in 1863 and 1864 relating to the claims of the Chehalis, bearing upon the matter of this reserve, will be found in Kappler, Vol. I, page 901 to 904. The evidence, however, in the present case would indicate that the action of Agent Eels in the decade—1880-1890—rather than the recommendations of 1863 and 1864 brought about the creation of this reserve.

At the council of the Quinaielt Indians held April 4, 5 and 6, 1912, at Taholah, Washington, to consider

applicants for tribal adoption, the first application upon which action was taken was concerning David Provoe and his family and the record of that council proceedings is as follows:

* * * * * * *

1. Case of David Provoe.

The first case was that of David Provoe and his family. The Superintendent explained that this man and his family were admitted into the tribe on an occasion before this, but that the said council was not duly called by the Superintendent as required by the Department. The case was presented in order to give the members a chance to express themselves again in a council duly called by the Superintendent for the purpose of considering applicants for admission into the tribe.

Billy Mason, a member of the tribe, took this occasion to deny certain charges that had been made [339] against. He claimed that some people accused him of taking money for using his influence in getting applicants admitted into the tribe. He asked the Superintendent how all the people present at the council come to be there. He wanted the people to know that there were other members of the tribe to whom they could go besides himself and his father, Captain Mason. He mentioned Billy Garfield, Joe Capeman, Johnson Waukenas, and others. He stated that there was not a person in the house who could say that he ever received any money for helping people in securing admission into the tribe.

The Superintendent explained that some of the people were notified by himself. All who requested to be notified of a council were informed by him. The Superintendent asked Billy Mason what he know of David Provoe.

Billy Mason stated that he was not present at the Council previously held in which David Provoe appeared. He did not know the man and stated that he would leave the matter for the rest of the members of the tribe to decide.

Captain stated that he had heard that there were over 300 Indians coming for land on this reservation. He stated that prior to this time some of the people who were admitted never visited the reservation. They did not come to live on the reservation nor help toward making improvements. He stated that he is not the only one that feels this way. Several other members had expressed themselves in this way. He wants the people who are adopted to come here and help the people at this place. In regard to the application of David Provoe and his family, Captain Mason stated that he knew nothing of them.

David Provoe stated that he was born in the Cowlitz country. His father was a Canadian Frenchman, and his mother, an Indian woman, was from the North near the border on the American side. His wife belongs to the Nisqually tribe of Indians and is related to some allottees on the reservation. Isaac Bastain, he claimed, was a cousin to his wife. He also mentioned Mary Sampson as being a cousin to his

wife. The applicant has no home and wants to make his home on the reservation. He stated his willingness to come on the reservation and help to improve the roads. He stated that he had two horses and would be glad to let them work on the road.

John Smith, a member of the tribe, stated that he knew the applicant, and has known his wife for ten or fifteen years. He also knows the applicant to be a hard working man, and knows that the man will come to live here and help the people. That he was the kind of men the people needed. A man who had teams and wagons to help improve the roads.

Isaac Bastain stated that he knew the man to be a good hard working man, one who will help himself and help other people as well. [340]

Bob Pope, a member of the tribe, says he is an old man now and would like to see some people come in and be neighbors to him.

John Clip, a member of the tribe, says that he knows the applicant. He is a man who will live on his place and improve it. He believes it would be a good thing for the tribe if they would adopt him. He would not do like some other people who get land here but will not come to live on it.

There being no further discussion, the Superintendent presented the following for adoption * * * * * * The vote resulted as follows: 32 for adoption, and 0 for rejection."

The names of the living plaintiffs in the present

suit are placed below in the left hand column and the names of certain of the Provoe family shown by the adoption record of the council to have been voted upon favorably are placed in the column to the right:

Mary Francis Provoe,	Mary Francis Provoe, wife, 57 years
Laura M. Brown,	Laura May Brown, daughter, 30 years
Frank M. Provoe,	Francis Marran Provoe, son, age 40 years
Rosa H. Garrard,	Rose Harriet Garrard, daughter, 25 years
Sarah Spencer,	Sarah Jane Spencer, daughter, 32 years
Isabelle R. Rainey,	Isabelle Rebecca Rainey, daughter, 37 years
William A. Provoe,	William Wallace Provoe, son, 35 years
Raymond A. Provoe,	Raymond Alexander Provoe, son, 22 years

It will be noted that this record shows that David Provoe stated that his wife belonged to the Nisqually tribe. This bald statement is not sufficient to overcome the weight of the circumstantial testimony which has been given concerning her birth and that of her mother and her mother's father and mother and their residence and associations.

Twenty or twenty-five years ago it was written: "The change (from tracing lineage through the female ancestor to tracing it through the male) may be observed taking place in Northwest America peopled

by the Thlinket, Haide and Salish tribes. The first are pure totemists. The last have arrived practically in the South at the modern family while a curious intermediate stage pervades the interjacent region." (Vol. X, Encyclopedia Britannica, Eleventh Edition, page 166.) [341]

The Chehalis are a Salish tribe, "In the South," as here meant. From this point it is significant that the plaintiffs in all cases, and their immediate ancestors, have not taken Indian names but the surname of the father. If the transition described in the foregoing was complete so far as this tribe is concerned at the time in question then Mary Francis Provoe, upon her marriage in 1870, before the Executive Order of 1873, to David Provoe, a Cowlitz, took his status, that is, by her marriage she became a Cowlitz, and their children should be classed as Cowlitz. Whether classed as Upper Chehalis or Cowlitz the plaintiffs named in this suit, other than John W. Provoe, are entitled to allotment.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Nov. 21, 1928.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy [342]

United States District Court, Western District of Washington, Southern Division.

Nos. 312, 299, 300, 301, 302, 306, 307, 309, 314, 315, 320, 321, 324, 325 and 326-E.

SIXTEEN INDIAN ALLOTMENT CASES,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION.

IT IS HEREBY STIPULATED by and between the counsel for the respective parties hereto, that for the purposes of Appeal, one Statement of Evidence shall suffice for the entire Sixteen cases, and one Transcript of Record shall also suffice as a transcript for all the cases on appeal.

It is further stipulated that for the purposes of Appeal herein, all of the above cases that are appealed may be deemed consolidated.

DATED this 19th day of March, 1929.

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiffs.

ANTHONY SAVAGE,
United States Attorney.

TOM DEWOLFE,
Assistant United States Attorney.

[Endorsed]: Filed in the United States District

Court, Western District of Washington, Southern Division, March 19, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [345]

In the United States District Court for the Western District of Washington, Southern Division.

HILARY HALBERT, JR., et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

FILINGS—PROCEEDINGS.

Date.			
Month	Day	Year	
Apr.	20	1929	Filed Notice of Lodging Bill of Exceptions in Indian cases No. 299, 300, 301, 302, 306, 307, 309, 312, 314, 315, 320, 321, 324, 325, 326. [348]

COPY OF RECORD FROM U. S. DISTRICT COURT EQUITY JOURNAL, TACOMA.

At a regular session of the United States District Court for the Western District of Washington held on April 30, 1929, at Tacoma in the Southern Division of said District the Honorable Edward E.

Cushman, United States District Judge presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal record of said Court as follows:

No. 299-E and Consolidated Causes.

HILARY HALBERT, JR., et al.

vs.

UNITED STATES OF AMERICA

ORDER SETTING HEARING DATE FOR SETTLEMENT OF STATEMENT OF EVIDENCE.

On this 30th of April, 1929 the settlement of the Statement of Evidence in Causes No. 299-E etc., (Indian cases) is ordered set for hearing on May 13, 1929. [349]

COPY FROM EQUITY JOURNAL U. S. DISTRICT COURT, TACOMA.

At a regular session of the United States District Court for the Western District of Washington, held on May 13, 1929, at Tacoma in the Southern Division of said District, the Honorable Edward E. Cushman, United States District Judge presiding, among other proceedings had, were the following truly taken and correctly copied from the Equity Journal of said Court as follows:

No. 299-E and Consolidated Causes.

HILARY HALBERT, JR., et al.

vs.

UNITED STATES OF AMERICA

ORDER CONTINUING TIME FOR SETTLEMENT OF STATEMENT OF EVIDENCE.

On this 13th day of May, 1929, this being the time set for the settlement of the Statement of Evidence in the above causes consolidated for the purposes of appeal, it is ordered that this be continued over one week to be heard at Seattle, placed at the foot of the calendar, the proposed Bill and amendments to be sent to the Seattle office. [350]

In the United States District Court for the Western District of Washington, *Northern* Division.

Tacoma cases 299, 300, 301, 302, 306, 307, 309, 312, 314, 315, 320, 321, 324, 325, 326.

HILARY HALBERT, JR., et al,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

SETTLEMENT OF STATEMENT OF EVIDENCE.

Now on this 20th day of May, 1929, Settlement of

Statement of Evidence is continued to June 20th for Government to file amended statement.

Minute Entry of May 20, 1929. [350A]

In the United States District Court for the Western District of Washington, *Northern* Division.

Tacoma cases 299, 300, 301, 302, 306, 307, 309, 312, 314, 315, 320, 321, 324, 325, 326.

HILARY HALBERT, JR., et al,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

SETTLEMENT OF STATEMENT OF EVIDENCE.

Now on this 1st day of July, 1929, Settlement of Statement of Evidence is continued one week at Tacoma.

Minute Entry of July 1, 1929. [350B]

United States District Court, Western District of Washington, Southern Division.

No. 299-E, 300-E, 301-E, 302-E, 306-E, 307-E, 309-E, 312-E, 314-E, 315-E, 320-E, 321-E, 324-E, 325-E, 326-E.

HILARY HALBERT, JR., et al,
RICHARD HALBERT,
VERNON SIDNEY HALBERT,
SIDNEY E. HALBERT,
ARCHIE PELLARD,
ROSE PEERS PICKERNOLL, et al,
MARY FRANCIS PROVOE, et al,
LULA M. ELLIOTT, et al,
LIZZIE ROLFSON, et al,
VIRGINIA WALKOWSKY, et al,
MARY BARICHIO PETIT, et al,
DEWEY BARICHIO, et al,
EDNA MAY ELLIOTT, et al,
CHARLES G. ELLIOTT, JR.,
AGNES RUBENS, et al,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

AMENDED PROPOSED STATEMENT OF EVIDENCE.

Comes now the above named defendant, by Anthony Savage, United States Attorney for the Western District of Washington, and Tom DeWolfe, Assistant United States Attorney for said District, and submits

the following as a true and complete statement of all evidence essential to the decision of the questions presented by the appeal of the defendant and appellant from the decrees entered herein against the defendant, and in favor of the several plaintiffs. [351]

TESTIMONY OF W. B. SAMS FOR ALL THE PLAINTIFFS.

W. B. SAMS, being sworn, testified for all the plaintiffs herein, that he is the Superintendent of the Quinaielt reservation—that he had been superintendent of the Tahola Indian School on the reservation since 1921. That there is no Indian School now but there is a public school, and for six years prior was allotting agent for the United States for the Fall reservation in Idaho, Fort Beck reservation in Montana, and in Idaho; that he was familiar with the methods and rules of allotments on Indian reservations as followed by the Department of the Interior. That the son or daughter of an Indian who is otherwise qualified for an allotment and who has been allotted upon a reservation, is also subject to allotment; but that the son of the second allottee, even though living upon the reservation, and a descendant from the same ancestry, would have to be qualified—be enrolled, before he would be subject to allotment. That the allotment of the father, of a grandfather and a father, does not necessarily exhaust the right of the allotting agent to *allott* to the son. That the headquarters for the Quinaielt agency are located in Hoquiam, about 35 miles from the Quinaielt reservation, and the agency has been located in Hoquiam since about 1922; that he knows the Halberts (certain of the plaintiffs

herein) and that most of them live out of Hoquiam the same place the agency is now located; that most of the Government employes of the Quinaielt reservation live at Hoquiam; that at the present time, to the best of his recollection, a little over 200 Indians are living on the Quinaielt reservation, and that about 1200 approved and pending allotments have been made, and that to the best of his recollection, very few of the allottees live on the reservation; that quite a few of the Indians residing at Bay Center and Willapa Harbor have allotments on the [352] Quinaielt *Riservation.* That he is very familiar with the Quinaielt reservation, its general character, location, etc. That the entrance to and exits from that part of the reservation around Taholah, where most of the Indians live, is accessible only by traveling along the beach a part of the way, which is possibly only during low tide—that other parts have been accessible for a great many years over the highway, but before that they had trails and roads up through the Quinaielt Lake region. That the Quinaielt reservation is heavily timbered and not adaptable to agriculture until the land is cleared—that quite a bit of the timber has been sold by him acting as Superintendent, but though it is admissible, it is not practical for the allottees to live on their allotted land until the timber is taken therefrom—that none of the Indians living on the Quinaielt reservation make *there* living by agriculture but are *fisherman* by trade—they have fishing grounds at Quinaielt River near Tahola, and the Quileute River near Quileute. Have known the Quinaielt for past seven years only; the Bay center Indians fish at the mouth of the Columbia; that in the seven years he has been

there a few of Quinaielt Indians have gone to the Columbia River for the fishing season at the mouth of the Columbia; The Indians from the Columbia come to Quinaielt reservation occasionally to fish. That there are two separate allotment schedules for the Quinaielt reservation—an old one and a new one, and that a few of the Indians residing at Bay Center and vicinity are on the new schedule, and a part of them live off the reservation—that by a guess on his part possibly half the Indians on the new schedule live off the reservation (having in mind a new schedule just completed by himself and Mr. Robling to be sent to the Department). That that part of the reservation where the timber has not yet been sold is accessible on the north but not the south—that the [353] north road was opened last summer, but prior to that was accessible only to a point in the reservation and not through to the Hoh River.

W. B. SAMS TESTIFIED ON CROSS EXAMINATION.

That the agency located in Hoquiam is a general agency for all the different tribes in southwestern Washington, and not the headquarters for the Quinaielt reservation, and tribe alone; that just a few of the Quinaielt Indians fish in the Columbia River, and they fish only to about Chinook and below.

JUDGE WILLIAM E. CAMPBELL'S TESTIMONY FOR PLAINTIFF.

William E. Campbell testified, on being sworn, that he lives at Hoquiam, and has been one of the Judges of the Superior Court at Montesano for three years; that previous to that time he was City Attorney for

Hoquiam and prosecuting Attorney for Gray's Harbor County; that he was born on the Hoquiam River, where the City of Hoquiam now is and is 55 years old; that he has known Mrs. Halbert, grandmother of the Halbert children, all of his life; that he knows she was allotted on the Quinaielt *reservatuon* and that she lived at Hoquiam when she was allotted, and that she died there; that Hoquiam is an Indian name and in early times was an Indian settlement taking its name from the Hoquiam River; That Hoquiam is the same place where the agency is; He is very familiar and well acquainted with the Indians of Southwestern Washington; that he knew and had talked with Sonnie Ford, a white man and uncle of the elder Mrs. Halbert, who was one of the interpreters at the meeting between Governor Stevens and the tribes of Southwestern Washington in Cosmopolis in 1855; that the elder Mrs. Halbert's father was a full-blooded Indian; that he has his knowledge of Indian matters in that district because his (the witness') father, settled in Hoquiam in 1852 and he had, [354] of course, gathered much information as to the historical facts concerning the Indians prior to his own recollection from his family, and that from what he himself knows and has heard of the facts concerning the Indians in that district, the history as related by James G. Swann of the Hoquiam district in his book "The Northwest Coast" is quite authentic; that he does not know of his own knowledge that James G. Swann was present at the meeting in *1885*; but that he had made an exhaustive study of the early history of Grays Harbor and in studying the real history went back to *Swanns* book which was considered an original

source in Indian history and considered the only authentic fact or report of many of the facts existing at that time. That according to what Sonnie Ford had told him the description of the meeting in that book was authentic; that from what he can remember dating back to 1878 and 1879 and from then on, as to the Indians in the Grays Harbor country and at Taholah at that time, he feels sure that the number reported at the meeting were Lower Chehalis, 217; Upper Chehalis, 216; Quinaielts, 158; Chinooks 112; Cowlitz, 140; a total of 843 is correct; that as a boy he knew probably every full grown Indian in the entire Grays Harbor, Quinaielt and Satsop districts, and knows of his own *knowledged* that they intermarried and intermingled a great deal; He knew this *because* his father was justice of the peace and the only postmaster on Grays Harbor, general advisor and Provost Marshal for nearly all of the Indians of that country; That the early allotments when the Shoalwater Bay Indians were allotted on the Quinaielt reservation is well remembered by him and they were so allotted probably for the reason that the Shoalwater Bay and the Quinaielt Indians associated together a great deal and inter-mingled in the picking of oysters at Shoalwater Bay and the trapping and selling of [355] furs on the Columbia River; that he does not know whether the Shoalwater and the Quinaielt Indians spoke the same language but is under the impression the Quinaielts spoke the Chehalis dialect, which is universal on Grays Harbor. He knows the Humptulips—all those living are alloted on the Quinaielt Reservation—that the few remnants of the Wynooche bands used to live on his father's and grandfather's farm and some of

them he knows are allotted on the Quinaielt reservation, that he only knows about the Satsops from hearsay and he thinks all of them are allotted on the Quinaielt reservation; that from his knowledge he believes the classifying of the Humptulip, Wynooche, Satsop, and other smaller tribes under the general term of "Lower Chehalis" (by the handbook of American Indians, Bulletin No. 30 issued by the Smithsonian Institution) is correct; which includes, according to his own knowledge the villages of the Satsop, Wenatichi Whiskah, Humptulip and other small tribes; In this same bulletin under subtitle of "Salishan Family," the Chehalis group embraces six dialects. These are the Quinaielt, the Quaitso of Northwest Washington, the Humptulips on the north part of Grays Harbor, the Lower Chehalis on Grays *Harboad* and Shoalwater Bay, the Satsop east of Grays Harbor, the Upper Chehalis east of Shoalwater *Bat*, and the Cowlitz on the river of that name south of the Columbia River", and he believes this is correct. The Chinooks were first described by Lewis and Clark who estimated their number at 400 but referred only to those living on the Columbia River. Swan placed their number at 112 in 1855, at which time they were mixed with the Chehalis with whom they have since completely fused, their languages now being extinct. That he believes that statement is true, that they have fused with the Chehalis Indians to a certain extent. That he knows many of the Chinook Indians and knows that they intermarried at [356] various times—that Mrs. Pollock is a Chinook Indian, and to a certain extent the Chinooks are fused with the Lower Chehalis Indians; (That he identified

the 'Northwest Coast' by Judge Swann, as being published in 1857, a few years after the meeting at Cosmopolis). That he has known all the Halbert Children since their birth, with the exception of Hilary, who is his own age; that he does not know whether the Indians of his *Distict* went up and down the coast to fish for salmon; that he does know some of them did go oyster picking in season, and to the Columbia River to sell *furts* and that the Halbert family went to the Columbia River to sell furs; that he knows Hilary Halbert, Junior, and that it is mainly a matter of how one looks at it as to whether Hilary Halbert, Junior, would be considered an Indian, but that he, himself, and the pioneers and old settlers who know the history of the families, consider the Halberts as Indians; that he knew the elder Halberts at the time they were allotted—knew their mother and he also knows their children—in fact knows them all. That the mode of living of the Halbert families has not altered a particle since the allotment of their parents —*speadking* of the younger Halbert's mode of living; that as an illustration one of the Halbert boy's name was proposed for membership in a lodge to which the witness belonged and was voted inadmissible by virtue of being an Indian; so far as the little children of the Halbert family are concerned, he supposed they would be considered like any other child—goes by the status of his parent, as a rule; that the Halbert boys are all Indians; that he knows that Fritz, the son of Rich Halbert lived with his father on Quinaielt Lake; that his father and family they lived in a boat house that was floated in the Quinaielt Lake; that Fritz has assisted his father; that the status of the boy has not, to

his knowledge changed in the last twelve to fifteen years; that the Quinaielt Indian agency is located at Hoquiam; that Hoquiam [357] is a trading point of Indians, and for possibly the past fifteen years has always been an attractive place for the Indians to do their trading; that in the early days a great many of them lived there and some of the Indians in the courtroom on that day (date of testimony* were born in Hoquiam and Indians have been coming in and out as long as he can remember; that he knows the Chenois family, having gone to school with the boys; that they were born at Chenois creek; that they were not born on the Quinaielt reservation but about 12 miles from where their Grandmother Halbert was born, and that the Chenoi's are allottees on the Quinaielt reservation; that the Indians of the Quinaielt reservation ship all their fish off the reservation to different places to canneries perhaps, at Aberdeen and Hoquiam; that Halbert used to be more or less interested in buying fish at Hoquiam; that to a considerable extent Hoquiam is the principal trading point; that for the past ten or twelve years Indians have been in and about Hoquiam daily.

JUDGE WILLIAM E. CAMPBELL'S TESTIMONY ON CROSS EXAMINATION.

On cross examination he testified that he knew Lanie Ford Halbert; that he knew her mother and that he saw her away from the Hoquiam River only once; that he cannot remember Lanie Ford Halbert's mother's name; that the Black River, where he saw her, was at the east end of Gray's Harbor county near Oakville, where the Black River tribe lives, possibly

known as the Upper Chehalis tribe; that the distinction between the Upper Chehalis and the Lower Chehalis Indians was probably placed there by the Government; that as regards the intermingling of the various tribes of Indians, these tribes of the Upper Chehalis and Puget Sound, all great possessors of horses, used to come down in large numbers through the Chehalis [358] Valley to attend the potlaches and he does not believe there was any hostility between the tribes; that he does not know whether the Upper and Lower Chehalis tribes entered into the Quinaielt Treaty when it was made at the time of the setting aside of the Quinaielt reservation, for the reason that it was not made at an Indian council; The Chehalis Indians were at the meeting of the Southwestern tribes at Cosmopolis; after the meeting at Cosmopolis, Governor *Stephens* sent some representatives down and had a Treaty signed with these Indians and most of the signers of that Treaty, as furnish by the Government, were Quinaielt and Quileute Indians, and possibly one Grays Harbor Indian; don't know when Lanie Ford Halbert came to Gray's *Habor,* but does know that she lived with his grandmother at Montesano in the 60's. Lanie Ford Halbert is the grandmother of the Halbert boys and girls and she was a girl when she lived with his grandmother in the 60's. Lanie Ford Halbert was married to Mr. Halbert, a white man, in his grandmother's home and they lived with Alex Campbell, his father's brother, who was married to an Indian woman. That he does not know whether Halbert owned a homestead there, but knows that he owned some land. Some of the early settlers paid cash for the land. Some of the Indians took

homesteads the same as white people, filed homesteads under the Indian Homestead law. All the Indians at Oakville did. The Indian title to Gray's Harbor was never extinguished; that rather than have trouble with the Indians some of the white men bargained with them and bought the land from and paid them for it. The Treaty is the only thing that extinguished the claim and as many of the tribes did not sign the treaty it left a cloud on the extinction of the Indian title and is the reason for the passing of the Executive Order of '73. [359]

TESTIMONY OF WM. E. CAMPBELL ON BEHALF OF PLAINTIFF LIZZIE ROLFSON (No. 314-E).

Testifying with regard to Lizzie Rolfson (Plaintiff in No. 314-E), Judge William E. Campbell testified that he has known Mrs. Lizzie Rolfson all his life; that she is about two years older than he is; that she was born and lives in Hoquiam; that she is about half Indian blood and her affiliations with the Indians were that she belonged to those Indians at Hoquiam, Grays Harbor Indians; Virtually the same tribes he named on the Quinaielt reservation; that Lizzie Rolfson's mother was a full-blood Indian; that her father was a white man; that Lizzie Rolfson has four living children, Alvin Smith, Eugene, Juanita and Robert; that two of the boys live in California; that she is about 57 years of age; that Robert lives with his mother in Hoquiam, as well as the daughter and granddaughter; that these children are three-quarter Indian blood of the same tribe as their mother belonged to; That he knew Donald Smith and Vivian

Forden, grandchildren of Lizzie Rolfson, Vivian being the daughter of Mrs. Rolfson's daughter, and Donald being the son of her son Alvin; that Donald lives in California and Vivian in Hoquiam; that they are quarter-breed Indians and are both married to white people; that since she was in school, Lizzie Rolfson has always been considered an Indian and was the daughter of one of the early Indian doctors of the Grays Harbor country.

TESTIMONY OF WM. E. CAMPBELL ON CROSS EXAMINATION AS TO LIZZIE ROLFSON (No. 314-E).

Judge Campbell testified that he based his conclusions that the Rolfson family is considered as Indians on what he knows of their beginning; that he grew up in school with *Lizzei* Rolfson; that Mrs. Rolfson is like all the rest of the Taholah Indians in the court room that day; that the [360] Masons, Halberts, Rolfsons, etc., are all the same; that they do not live differently than the rest of the Indians in the Grays Harbor country; that he doesn't believe he can explain the difference in the mode of living between the white people and the Indians, but that they live like Indians; that Mrs. Rolfson does not live as well as most of the Indians; that he could not state what distinguishes them as Indians except that they live a great deal like Indians; Halbert, for instance, has lived on the reservation, but he (the witness) associates and talks with them, and other white people associate with them as though they were white people; that Hoquiam has always been considered an Indian settlement, but that now very few Indians live there; that it could perhaps be designated an Indian settle-

ment populated with white people. In the 80's the Northwestern Lumber Company's mill was built at the settlement of Hoquiam and the Indians who lived in the three Indian villages there on the Hoquiam River moved in two directions, one going to his grandfather's homestead and they all moved away from the original village except Hoquiam George, whose home after his death was used by the Halbert family spoken of herein; that his father gave the Indians permission to live on his homestead, and were permitted to live on the Carr homestead; probably as high as 50 Indians on his father's homestead; Hoquiam was incorporated in 1889 and there were more white settlers than Indians.

JUDGE CAMPBELL'S TESTIMONY ON RECROSS EXAMINATION

Judge Campbell further testified that Lizzie Rolfson was married three times and each time to a white man and that she lived always in Hoquiam, being away several times for short periods, living in Newport, Oregon for a short time. (It is admitted that Hoquiam is not on the Quinaielt reservation). [361.] That Hoquiam, with the exception of the Indian homesteads, has been on the assessment lists since the county was formed; that hundreds of Indians were at his father's house when Colonel Woods took the census in the *earlu* 80's, but does not know what the census was for, only that the Indians were enrolled; He was the Quinaielt agent and he enrolled the Indians at Hoquiam at that time.

Judge Campbell testified on RE-DIRECT EXAMINATION that Lizzie Rolfson was born on the

Riverdale homestead, now a part of Hoquiam, was the sole heir and sold the homestead, buying property across the river from the original homestead and has always owned that home since selling the original homestead, her father's home.

TESTIMONY OF W. G. PEEBLES, FOR THE PLAINTIFFS.

W. G. Peebles, being sworn, testified for the plaintiffs; that he is a timber cruiser and has lived in Hoquiam about 36 years; that he is familiar with the general character of Hoquiam, as an Indian settlement and with its history.

> On stipulation it is agreed that the witness W. G. Peebles testimony as to the early history of Hoquiam as an Indian settlement would be of the same character as that given by the witness Judge William E. Campbell—with the exception that the Government does not concede that the Indians around Hoquiam are generally considered as being members of the Chehalis group of Indians.

He testified that he knows Rich Halbert, the son of Fred Halbert, very well; that he knows that the Halbert family has lived in Hoquiam since 1888—his first knowledge of them; that he knew their mother and that she was an allottee on the Quinaielt reservation; that he knows the Halberts lived about a mile up the river from Hoquiam city limits, but does not know where the grandmother lived when allotted. [362] That the parents of Sidney, Hilary, Benjamin and Fred lived in Hoquiam, and the boys, with the exception of Fred live in Hoquiam, Fred living at the

Lake; that he knows their families when he sees them; that he regards them as Indians;

W. G. PEEBLES TESTIMONY ON CROSS EXAMINATION.

W. G. Peebles testified further that he does not know whether the Halberts maintained tribal relations but does know that Fred has been on the reservation fishing; that he knows that Rich Halbert (plaintiff) has been on the reservation working with his father; that he does not know their tribal relations; that he knows that Hilary Halbert was on the reservation with boats when they first began using boats on Quinaielt Lake.

W. B. SAMS TESTIMONY ON BEING RECALLED AS A WITNESS FOR THE PLAINTIFFS.

W. B. SAMS, superintendent of the Quinaielt reservation testified that he has charge of the office files —that the office copies of the census rolls are in his keeping—the originals being in Washington; that the Census reports in his office would disclose whether any one was enrolled as an Indian or not in the district; that the "Census of Quinaielt reservation" produced then and there is the office copy of the Agency of the Census report.

(Here the Government admits that the names of Hilary Halbert (Hilary, Junior, Dorothy and Mildred) appear on the census rolls of 1913 to 1918—unallotted, and the name of Rich Halbert appears on the census rolls for the years 1914 to 1918—unallotted). Rich Halbert as Frederick

R. Halbert, Ella Dorothy Halbert the same as Dorothy Halbert.

On cross examination W. B. Sams further testified that he does not know whether the Department of the Interior au- [363] thorized the names of these children being placed on the census rolls; that he does not know how it happens they are named on the census rolls; that he does not know how their names happened to be dropped from the census rolls; that he was not in charge as superintendent when they were dropped; that the superintendents in charge at the reservations were required to keep track of the school children of the Indians whether they attended the school or not and they wrote down a great many childrens names on the rolls to keep track of them; that he believes that it is subsequent to 1912, when they commenced keeping track of the children, a circular having been issued to that effect; that these children were all minors during the period 1913 to 1918 of school age.

W. B. SAMS' TESTIMONY ON REDIRECT EXAMINATION.

That one purpose of the census, as he understood it, was to keep track of the children of the Indians of school age, and the other purpose was to keep a roll of all the Indians; that hundreds of the Indians on the rolls are adults; that Mr. Garber was the agent at the time those census reports were made up, and the witness presumes that Mr. Garber had the same instructions he received with regard to enrollment; that he (Mr. Sams) recommended names for allotment because they were on the census rolls and there was no objection made by the Indians as to the allotments

suggested, but that where the Indians did object he put the matter up to the Indian office for instruction; that he has never recommended an allotment without first taking the matter up with the Indian tribe; that every name suggested by him has been passed on to the tribe with the exception of the minor children of parents enrolled on the reservation. That when he speaks of an Indian being enrolled he means the census roll. [364] That it is the only roll there is of Quinaielt Indians *buth* that the names on the census roll are not all Quinaielt Indians, as track was kept of Indians whether they were Quinaielts or not. For instance, the name of Billy Mason's wife, who is a Yakima Indian, is on the roll with the notation that she is a Yakima allottee; that there is nothing on the census rolls in question to show that the Halberts are not Quinaielt Indians; that he does not know if the elder Halberts are allotted as Quinaielts or not; that he knows that Mr. Fritz Halbert, Senior, has been on the roll but he could not say necessarily that he, Fritz Halbert, Sr., is a Quinaielt Indian; that he (Mr. Sams) never appointed Fritz Halbert, Senior, as a policeman and that he never did serve as an Indian policeman under; He did place permits to be issued to white persons to fish in Quinaielt Lake, in his hands as a matter of convenience and appointed him to issue them, the same as the fish hatchery of the Government had *some*.

W. B. SAMS' TESTIMONY ON RECROSS EXAMINATION.

That there are a large majority of the Indians on the Quinaielt reservation who are not Quinaielt Indians so far as he knows.

TESTIMONY OF FRED P. HALBERT FOR THE PLAINTIFFS. (Cause No. 300-E).

Fred P. Halbert, being sworn, testified that he is the father and duly appointed guardian ad litem of Rich Halbert, a minor, appointed for the purpose of bringing this suit (Cause No. 300-E); that he (the witness) was allotted on the Quinaielt Reservation. [365]

Allotment to witness Fred P. Halbert is admitted by the Government.

Plaintiff's Exhibit No. 1, admitted in *evidende,* said exhibit being the Trust Patent issued to the witness Fred P. Halbert, by the Government for his allotment on the Quinaielt reservation.

He testified that his mother, Lonie Ford Halbert, was allotted on the Quinaielt reservation and received a trust patent, but she died three years ago; that his mother was living in Hoquiam when allotted; that he was living in Hoquiam when he was *alloted;* that his boy Rich (plaintiff) is 19 years of age and was born in Hoquiam; that at the time of testifying he lived with his son Rich at Lake Quinaielt, about 200 feet out of the confines of the Quinaielt reservation where he made his living operating boats and ran an auto park on the lake, and into which business he went at the suggestion of Dr. Keck, the Indian agent; that he and his son lived there during the past year; that prior to that time, or during 1913 *possible,* and 1914 and 1915, they lived at *Yahola* on the Quinaielt reservation; that while at Tahola he made his living by fishing, he having a fishing location in the Quinaielt River which he secured through the Indian

Agent, Mr. Garber, and his boy Rich was with him at that time, and then moved to the Quinaielt Lake section, within the reservation boundary, where he lived for about 10 years; that it was prior to going to Taholah that he lived in Hoquiam, where he was born.

Q. What was the circumstances whereby you left and went up to Lake Quinaielt?

A. I went up to Lake Quinaielt, Dr. Keck, the Agent at that time at Taholah—he asked me if I would not go up to the Lake and put on some boats and take care of the public up there; if I did not, that the Indians stood a chance [366] to lose the Lake and wanted me to put boats on and save the Lake for the Indians; that is for about 10 years he lived in the Lake Quinaielt section, within the reservation boundary, and about a year ago moved to Lake Quinaielt just outside the reservation where he is a boatman and runs an auto park; that he has not applied for a license, but has the permission of the Government to operate these boats on Quinaielt Lake; that white persons have not the right to go on the Quinaielt reservation and operate under these circumstances; that he believes he is recognized by the Government as a Quinaielt Indian because he lives up to the rules of the reservation strictly; that every time rules are passed down there he is notified and *have* to live up to those rules—for instance, having been notified to take his power boat off the lake; that no one but Indians fish in Quinaielt Lake and Quinaielt River, but that he does not so fish; *Commerical* fishing is not allowed on the Lake, and white men cannot fish on it for trout except with a permit issued by him (the witness) as

representative of Mr. Sams, the Agent. That to his knowledge his son (the plaintiff) was enrolled as a Quinaielt Indian, because in 1916 when he was living at Taholah, Mr. Garber, the Indian Agent, asked me *tomcome* in and enroll Rich; that he did not apply for an allotment for Rich at that time and did not ask about allotments, but that Mr. Garber *siad* Rich *wqs* entitled to an allotment, being the reason he wanted to enroll him; that Mr. Garber did not allot or attempt to allot Rich at that time for the reason they were not *than* making allotments; that to his best recollection allotments were resumed two years ago; that then he applied for an allotment for Rich. That he and his brothers went down to the office through Mr. Sams and he made a selection for Rich and Mr. Sams wrote out the description. [367]

Plaintiff's Exhibit No. 2 in Cause no. 300-E admitted, being a typewritten description of the selection.

That Plaintiff's Exhibit No. 2 is a description of his first selection as signed by himself and Mr. Sams, the Agent; that it was prepared by the Agent and he was given one copy. That when he (the witness) was allotted he lived in Hoquiam, then an Indian settlement, there being several Indian villages along the Hoquiam River and the Bay, in the neighborhood from which he and his mother came; that he goes into Hoquiam very frequently and nearly always sees Indians there; that he does not always talk to them; that he knows by sight most of the Indians on the reservation and is on friendly terms with most of them, and some of them come to his place; that he has at-

tended various tribal councils at Taholah of which he was notified, for the purpose of seeing what the Indians were doing—what their routine business was.

TESTIMONY OF FRED P. HALBERT ON CROSS EXAMINATION.

That he has attended four of the Quinaielt tribal councils at Taholah; attended one in 1927; two in 1926 and one when he lived in Taholah thirteen years ago, before the Indians had the regular councils they now have. I judge there were about 100 Indians at each of these councils—they were called by Mr. Sams; that he speaks a little Chinook but the Chinook is not the language the Quinaielts speak generally that they speak the Quinaielt generally, but that he does not speak the Quinaielt language; that his son Rich (plaintiff in No. 300-E) has not attended the tribal council meetings because he had to leave him at home to take care of the place; that he is 19 years old and does not speak the Quinaielt language; that he observes the rules applying to Indians on the reservation insofar as the running of boats is concerned—[368] running boats for hire; that a white man is not allowed to run boats for hire on the lake except that there is one white man who is married to an Indian woman operating boats on the *Quianielt* River; that his son Rich was born in Hoquiam and that Rich's mother (the plaintiff's mother) was a white woman.

TESTIMONY OF FRED P. HALBERT ON REDIRECT EXAMINATION.

On redirect examination Fred P. Halbert testified that the only reason he is operating there is because he

is a Quinaielt Indian and that owing to the ruling of the Indian Department at Washington, D. C., which voted all power boats taken off the Lake, he (the witness) lost the use of his power boat on the lake, because he was living up to the regulations made for the Indians.

(It is admitted here by the Government that the witness—father of the plaintiff Rich Halbert, is part Indian).

TESTIMONY OF FRED P. HALBERT ON RECROSS EXAMINATION.

On recross examination, the witness Fred P. Halbert, testified that his oldest living brother is Hilyer and his oldest brother Kelly, who is dead, would be about 55 years old; that his oldest brother's father was a white man and that his mother's father was a white man and his father (the witness' father) was a white man, and that the mother of his son Rich, was a white woman.

TESTIMONY OF FRED P. HALBERT ON RE-REDIRECT EXAMINATION.

On re-redirect examination Fred P. Halbert *testifie* that for about five years he *wqs* an Indian police at Quinaielt Lake and that none but Indians are allowed in that position; that at the time he was allotted on the Quinaielt [369] reservation he was married to his present wife, a white woman, and was living with her at the time.

TESTIMONY OF BENJAMIN F. HALBERT, PLAINTIFF.

Benjamin F. Halbert, being sworn, testified that he is the father and guardian ad litem of Vernon Sidney Halbert a minor, plaintiff (301-EO; that he is an Indian allotted on the Quinaielt reservation, but does not remember when he was allotted; that the trust patent was issued to him.

(Plaintiff's Exhibit No. 3—Trust Patent above testified to, admitted in evidence).

That his son, Vernon Sidney, is nine years old and was born in Hoquiam and has lived there with him all his life; that he (the witness) was living in Hoquiam when he was allotted within a few blocks of where his child was born; that his son's grandmother was allotted on the Quinaielt reservation, as well as his uncles and aunt, including Fred P., Sidney Seth, Hilary Houghton and Ethan Ernest Halbert and Phoebe Alexander; that he (the witness) attended the Chehalis Indian school for three terms, it being the closest available Indian school to where he lived; There was a public school nearer; that he never lived on the Quinaielt reservation but has been there many times and at the Lake and Taholah; that his sister Phoebe Alexander, who was allotted on the Quinaielt reservation, lived on the reservation at Taholah for about seven years and had a fishing right on the reservation, and he took his family up on occasions and helped her fish; that through his brother Hilary he was instructed by Mr. Sams, that he was to go to the Agency and enroll his son, so he went up to the Agency and enrolled Vernon, his son, about three years ago; that Mr. Sams enrolled

his son, picked out the allotment on the map, wrote a description of it and gave him a copy of it and that the document then [370] shown to him was a copy of the description and the enrollment signed by himself and Mr. Sams.

Plaintiff's Exhibit No. 4 (Cas. No. 301-E) description of land and copy of enrollment—admitted in evidence.

That he (the witness) is one-quarter Indian and that his son Vernon is one-eighth Quinaielt Indian; that he (the witness) has received an allotment on the Quinaielt reservation, but that he has never lived on the allotment; that timber is being removed, but it still has timber on it and he feels that until the timber is removed it would not be possible to live on it.

Plaintiff's exhibit No. 5, being trust Patent issued to Lanie Ford Halbert, admitted in evidence.

That Lanie Ford Halbert was his mother and that she was allotted on the Quinaielt reservation in accordance with the trust patent just admitted in evidence;

Q. Do you go up and visit your brother, Frederick, at the Lake quite frequently—associate and federate with him quite frequently—your child with Rich and the people around the Lake, the Indians who live up there?

A. Yes.

TESTIMONY OF BENJAMIN F. HALBERT ON CROSS EXAMINATION.

That he does not know for certain where his mother, Lanie Ford Halbert, came from—on the Chehalis, but he does not know exactly; that he lives in Hoquiam

and has worked in the sawmill for 25 years; that he has attended tribal councils in Taholah but he does not remember exactly when; that he is recognized as an Indian by the Quinaielt tribe and one of their members; that he does not know whether his son Vernon Sidney, is recognized by any tribe as a member or not; that he does not know whether his son Vernon (born [371] in 1918) has ever associated with the Indians or not, except through him and with him at the reservation; that Vernon Sidney's mother was a white woman.

TESTIMONY OF BENJAMIN F. HALBERT ON REDIRECT EXAMINATION.

That at the time he was allotted and prior thereto he was married to his present wife—a white woman.

TESTIMONY OF HILARY HOUGHTON HALBERT—(Plaintiff in 299-E).

Hilary Houghton Halbert testified that he is the father and guardian ad litem of Dorothy and Hilary Halbert, Jr., and Mildred Halbert; that Ella D is the same as Dorothy Halbert; that all three are living; that he is an Indian and allotted on the Quinaielt reservation; that the document offered him is his trust patent for his allotment on the Quinaielt reservation.

(Plaintiff's exhibit No. 6—Trust Patent admitted in evidence.)

That his three children named as plaintiffs were born in Hoquiam and they are all enrolled on the Quinaielt reservation as Quinaielt Indians; that about three years ago he enrolled them and applied for allotments; that Mr. Sams, the Indian Agent sent him word to come in

and pick out his selections for his children and he and his brothers went in and made selections and Mr. Sams wrote out the descriptions and gave him copies; that Mr. Sams did not question him, just wrote the description of the selections made by (the witness). The document is dated November 30, 1923 and is followed by witness' signature and Mr. Sam's signature.

Plaintiff's Exhibit No. 7, being [372] the document just above referred to and the *desceiption* of allotment selections, is admitted in evidence.

That he and his children have associated and affiliated with the Indians on the Quinaielt reservation and the Indians surrounding Hoquiam; that he considers himself and his children as Indians; that he has always lived where his mother has lived and his children were born and raised in the same community and has never been away from there.

HILARY HOUGHTON HALBERT TESTIFIED ON CROSS EXAMINATION.

That his mother was Lanie Ford Halbert, and that he does not know whether she came from the Chehalis tribe of Indians originally; that he could not swear that it is true that his mother came from the Chehalis River, as his brother testified. That he never heard where she was born. That he received the note from Mr. Sams stating that Hilary Halbert was duly enrolled as a member of the Quinaielts (Plaintiff's Exhibit No. 7).

At this point Plaintiff objected to any attack as to the validity of the patent issued to Mrs. Halbert or her sons as to their status as Quinaielt

Indians for the reason that patents having been issued Government is estopped from denying they are such.

Objection over-ruled. (No exception taken or allowed). . .

That he does not remember whether he ever received a letter from Mr. Sams after that stating that he (Mr. Sams) had no authority to make the said allotment, and that although he would be most likely to remember it if he did.

A. I don't remember whether I ever received any letter from him (Mr. Sams) or not.

Q. Will you say you did or did not? What would be your best recollection?

A. I would say perhaps I did. I would not swear to it. [373]

Q. Do you receive much correspondence from Mr. Sams?

A. No.

Q. You probably would have *remember* it if Mr. Sams had written you a letter stating he had no authority to place your children on the allotment roll?

A. If I got the letter I would have understood it likely.

Q. If you had received such a letter you would have remembered it, wouldn't you?

A. Likely I would.

Q. Will you say you did not or did receive such a letter?

A. I could not say whether I did or did not.

TESTIMONY OF SIDNEY SETH HALBERT (Plaintiff in 302-E).

SIDNEY SETH HALBERT, being sworn, testified that he is the father of Sidney E. *Halbte* (Plaintiff in No. 302-E); that he has been allotted on the reservation—the Quinaielt reservation and is considered an Indian and that a trust patent was issued to him; that the trust patent shown to him then is the one issued to him.

Plaintiff's exhibit No. 8, being trust patent issued to Sidney Seth Halbert, admitted in evidence.

That his son Sidney E. Halbert, was born in May, 1923, in Hoquiam; that he (the witness) has lived in Hoquiam all his life, and lived in Hoquiam when he was allotted on the reservation; that his children were born in Hoquiam; that after Mr. Sams sent him word he and his brothers went down to the Agency and his son, Sidney E. Halbert, was enrolled about November, 1923; that no question was raised then as to this child being an Indian and Agent Sams showed us the map and then made two copies of the selections; Agent Sams signed both copies and he (the witness) signed both copies and one was kept by the Agent and one was kept by the witness. [374] that no question was then raised as to whether any of his boys, nephews or nieces were Indians or not; that Mr. Sams told him then that his children were entitled to allotment on the Quinaieelt reservation.

Government admits that witness got a copy of the selection testified to just above, from Mr. Sams, similar to Plaintiffs Exhibit No. 2.

TESTIMONY OF SIDNEY SETH HALBERT ON CROSS EXAMINATION.

That he does not recall if he got a letter from Mr. Sams dated January 23rd, 1924 (read to the witness) stating "Referring to your desire to file, the Indian office has advised me I have no authority to accept or file such application and I cannot do so until such authority is issued by the Commissioner of Indian Affairs, Sincerely W. B. Sams."

Admitted by Plaintiffs that said letter was received; also admitted that he received a letter from Mr. Sams with the signature torn off, returning to him that part of the selection with the signature torn off.

That he considers himself a Quinaielt Indian. He supposes the Quinaielt Indians so consider him, as he had a little mill where he employed Quinaielt Indians and he goes upon the reservation all the time. He has attended two or three tribal councils at Taholah, one, two years ago, and cannot recall the other years.

TESTIMONY OF W. B. SAMS RECALLED AS WITNESS FOR PLAINTIFFS IN HALBERT CASES.

That it was his duty to keep the census rolls and of the Quinaielt reservation; that he keeps a roll for the Quinaielt Indians and one for outside Indians; that the Halbert children were carried on the rolls until 1919 and then for some unknown reason to him, they were dropped; that on the 1924 roll of Indians kept by him as Superintendent [375] all of the allotted

members of the Halbert family appear, that being the Quinaielt roll.

W. B. SAMS TESTIMONY ON CROSS EXAMINATION.

That all the members who received allotments are on that 1924 roll; that those names got on that roll by the change in the rolls—where the allotments begin about 1906 there were 305 Indians enrolled on the Quinaielt census roll.

W. B. SAMS' TESTIMONY ON REDIRECT EXAMINATION

That all the members were enrolled but he could not say that they were approved by the Department, and that he did not say that patents had been issued to them; that the facts are that at the time the allotments began on the Quinaielt reservation, the Quinaielt census contained the names of 305 Indians, whether entitled to be there or not, but that when the allotments were finished by Mr. Garber he had turned in 690 allotments and 300 additional selections not approved and that he is informed that the superintendent simply took up those allotments and put them all on the census; That Mr. Keller, a clerk in his (the witness') office told him this. Mr. Keller is available, alive, his (witness') clerk, and is in Hoquiam; that the allotment rolls present in court would show the changes themselves. But even with that fact the Halberts were carried on the roll as late as 1924; that they are still being carried; that every allottee is carried on the roll. [376]

W. B. SAMS' TESTIMONY ON CROSS-EXAMINATION.

Testified that this census roll under inspection is the roll of all allotted Indians on the reservation irrespective of whether Quinaielts or not.

W. B. SAMS' TESTIMONY ON REDIRECT EXAMINATION.

That there are Quileutes and Chinooks on the roll; also Lower Chehalis Indians, but not many Upper Chehalis; That many Lower Chehalis and other Indians were allotted by the agent but never enrolled prior to allotment, just simply allotted by him and enrolled afterwards because they were allotted; that some Upper Chehalis, but very few, were allotted and enrolled on the Quinaielt roll, as they were adopted by the tribe at Chehalis; some were not adopted but some were on the Quinaielt roll; that Mrs. Halbert and her children were never adopted and they were on the roll.

W. B. SAMS TESTIFIED ON RECROSS EXAMINATION.

That the fact that an Indian is enrolled on the Quinaielt census roll does not show that he is a member of the Quinaielt tribe.

TESTIMONY OF ALLEN CHENOIS FOR PLAINTIFFS.

Allen Chenois, being sworn, testified that he is a full blood Indian, was born at Hoquiam, or ten miles from Hoquiam, and still lives where he was born; that he has been allotted land on the Quinaielt reser-

vation; that he has always lived near Hoquiam, and about 25 miles off the reservation; that he goes to the reservation each spring during the fishing season and when it is over returns to his home near Hoquiam; that quite a few Indians do that; that he would judge perhaps a third of the Indians leave the reservation after the fishing season is over; that he [377] knows Mrs. Halbert, the mother of Sidney Seth Halbert; that he knows Hilary Houghton Halbert, Fritz or Frederick P. Halbert and Ben Halbert—all four of the Halbert boys; that he has known them all his and their lives; that he will be 54 years old and the oldest Halbert boy is about his age; that he has known the Halbert family all his life and played with the boys as children; that of course there were just a few Indians around then and at that time they considered the Halberts as Indians; that Hoquiam is considered the principal trading point of the Indians; they sell their fish in Hoquiam and buy their tackle and nets there; that he could not say how many Indians live on the Quinaielt reservation proper; that he could not say what proportion of Indians come into Hoquiam from the reservation each month—more than half, *probable;* that he sees them on the streets almost every day in Hoquiam; they come to see Mr. Sams to shop; originally Hoquiam was an Indian village; the Halberts, Indians, and one other, named Lizzie used to be Campbell, lives at Hoquiam; he does not know if there are any others living there.

ALLEN CHENOIS' TESTIMONY ON CROSS EXAMINATION

Allen Chenois testified that as boys they considered the Halbert boys as Indians; that the Halbert boy's children must be Indians now; that he hasn't seen them around so does not know if they live like Indians; that he has not been around the homes of the younger Halberts; has seen the old folks but the young Halberts live in different houses.

TESTIMONY OF CLEVELAND JACKSON FOR THE PLAINTIFFS.

Cleveland Jackson testified that he is a Quinaielt Indian living on the Quinaielt reservation and has been allotted thereon; that his mother is Alice Jackson and she [378] is the daughter of the Chief of the tribe—Taholah's daughter, and that he would be the hereditary chief of the tribe; that he lives at Moclips just across the boundary line of the Quinaielt reservation; that he makes his headquarters and virtually lives in Hoquiam; that he knows Mrs. Halbert and her four sons and their children; that he sees them when in Hoquiam; has been to their homes; that he is about 33 years of age; that Hoquiam is the trading center for the Indians and must be considered an Indian center as the Indian department seemed anxious to move its headquarters there; that probably ninety percent of the buying by the Indians is done between Hoquiam and Aberdeen; the fish are disposed of there and they buy all their provisions, tackle, etc., there; that he is in and out of Hoquiam almost daily and that he has always *seens* Indians there; that with regard to the custom of the

Indians of the Quinaielt reservation fishing in places other than the Quinaielt River, that he knows his father and mother used to go to the Columbia River to fish; that he fished on Gray's Harbor; that he knows where Shoalwater Bay is and is familiar with the fishing locations up and down the Coast; that the Quinaielt Indians went down to the Peacock Pit fishing location and Shoalwater Bay to fish; that the Indians come up to the Quinaielt country and fish, and did in times past; that the Indians from the Quinaielt reservation go down to the Harbor and the Columbia to fish; that that is an old custom; they have always done that; that he considers the Halberts as Indians rather than white.

CLEVELAND JACKSON'S TESTIMONY ON CROSS EXAMINATION.

That he considers the Halbert Indians and considers that they must belong to the Quinaielt tribe because they were allotted there; that he cannot say whether they live as [379] Indians or not since the Government had raised the standard of the living of the Indians considerably for a long time past; that some of the Indians live as a tribe on the Quinaielt reservation; that he would think that the Halbert family would live differently than those Indians who live as a tribe; that he himself is a timber cruiser and does some fishing.

CLEVELAND JACKSON'S TESTIMONY ON REDIRECT EXAMINATION.

Cleveland Jackson testified that he knows Harry Shale (present in courtroom); that Harry Shale is an Indian on the Quinaielt reservation, has the best home

up there and *probalby* as good as fifty percent of the white people; that his living is probably no different than the mode of the Halbert's living; that Billy Garfield a recognized Indian living at Taholah, fishes and runs a hotel for any one who has occasion to stay there; that his mode of living is no different than the Halberts, probably and that he lives the same as white people, just as a lot of the Indians do.

CLEVELAND JACKSON'S TESTIMONY ON RECROSS EXAMINATION.

That basing the standard of living on the method of Indians living in tribes and maintaining tribal relationships, it would be a different matter; that the Indian strain cannot be gotten out of them; they may have a part of their homes fixed up where the white man comes in and feels at home, yet in the back part of the house, they have the old Indian custom; part fixed up like the white people and part like the Indians; that he would not say it was fixed up like the old time Indians, but nevertheless, one would know it was an Indian house. [380]

CLEVELAND JACKSON'S TESTIMONY ON RE-REDIRECT EXAMINATION.

That there has been a gradual change in the mode of living of the Indians since he was a boy; that the Government has encouraged them to give up living in tepees and huts and taught them in school to uplift themselves; to try and live like the white people; that in Taholah there is a public school maintained by the county; that it has been the policy of the teachers to encourage the Indians to learn trades

and live like white people as nearly as possible, and that that has been the policy of the Government ever since he can remember.

TESTIMONY OF ALICE JACKSON FOR THE PLAINTIFF.

ALICE JACKSON, being sworn, testified for the plaintiffs, waiving an interpreter; that she is Alice Jackson and lives at Taholah, on the Quinaielt reservation; is the daughter of Taholah, the Chief; that she has never lived anywhere but at Taholah and the Quinaielt reservation; that she goes into Hoquiam now sometimes, and did years ago to pick berries; goes to Hoquiam sometimes once and twice a week; that nearly all the Taholah Indians go to Hoquiam; that she knows Mrs. Halbert and knew her long before she (Mrs. Halbert) was given her allotment; knew her up on the Hoquiam river; knows her son Hilary; knew all her children when they were small; that Mrs. Halbert is a half-breed Indian; that Mrs. Halbert, if living, would be about her age, 70 years; that quite a while ago she saw one of Mrs. Halberts sons living at Taholah for a while but he moved away; that she does not know where nor when; that she did not keep track; does not know which one; that they called him the Halbert boy; that she knows Mrs. Halbert had one [381] daughter, Mrs. Alexander, who was living on the reservation and had a fishing ground; fished in the Quinaielt river; her name was Phoebe; that she considered Mrs. Halbert an Indian because she was a half-breed; that she thinks Mrs. *Halbertschildren* belong to the Indians; that the Indians not living at old Taholah used to

go to Shoalwater Bay to make money picking oysters, and to the Columbia to fish for the white man; that every summer she and her husband used to go; not many times, and she thinks over thirty years ago; that she went there when she was married; that she could not say they went every summer, but did go back and forth picking oysters; that she does not remember other Indians coming from Shoalwater Bay to fish up around Grays Harbor; she does not know if they did; that no Shoalwater Bay or Bay Center Indians came to the Taholah reservation; that the Bay Center's after they got the allotment, never showed up to live at Taholah; never visited them after they got the allotments and they did not know the half-breeds either; they do not know the half-breed Bay Center Indians; they do not know who of them got allotments; that she never voted to adopt any of them who tried to get in at Taholah except Arthur Strong, Frank Law and Oscar McCloud, but never once for the Bay Centers; that she says this because she is not satisfied with who is coming in without their knowledge; that Mrs. Halbert's children live in Hoquiam; that she does not know what tribe Mrs. Halbert came from; that she does not know her mother; that they used to camp in front of the Halbert place and that is where she learned to know Mrs. Halbert. [382]

MRS. ALICE JACKSON'S TESTIMONY ON CROSS EXAMINATION.

Mrs. Alice Jackson testified on cross examination, that she is not satisfied with half-breeds, considering them as members of her tribe; that she does not know

where Mrs. Halbert's mother came from; that she has just heard about the Chehalis tribe; that she has not seen and does not know the younger Halberts, Rich and Hilary Halbert, Junior, and *Horothy* and Mildred L. Halbert; that she does not know that the Halbert boys ever associated with the Indians; that she is a Quinaielt Indian; knows the oldest Quinaielt Indians; knows all the Halbert boys but not their names; knows Phoebe Halbert from when she lived at Taholah, but not Dorothy; that she associates with the Quinaielt tribe.

MRS. ALICE JACKSON'S TESTIMONY ON REDIRECT EXAMINATION.

Mrs. Jackson testified that her father was a Quinaielt Indian; her mother was half Damon point, she thinks now known as the Gray's Harbor tribes, just across from Hoquiam that she knows the children of the allottees on the reservation from 3 to 19 years, but does not know the children of all the different allottees off the reservation.

TESTIMONY OF PETER HECK FOR THE DEFENDANT.

Peter Heck testified for the Government, that he is an Indian and lives on the Chehalis reservation; that he knew an Indian woman by the name of Sallie —Susan is her right name; that he knew her children; that they are dead; that he knew her girl Lena, whose name was Halbert when she married; that he knows one of Mrs. Halbert's children; that Susan was well known to him; that she was his aunt and lived and died in his house; that she (Susan) was

an Upper Chehalis Indian; that the Upper and Lower Chehalis Indians are separate; friendly sometimes; that this Susan was never adopted into [383] the Quinaielt tribe; that Susan died at his home on the Chehalis reservation; that Susan was the mother of Lena, or Lanie Ford; that he knows one of Lanie Ford's children is named Hill; that he knows Lanie Ford married a man named Halbert; that Susie was a member of the Upper Chehalis tribe of Indians and that Lanie Ford Halbert was a member of the Upper Chehalis tribe through her mother only; that he (the witness) is supposed to be one of the headmen of that tribe; that he received a homestead from the Government on the Chehalis reservation; that he does not consider the children of Lanie Ford Halbert as members of the same tribe of Indians as he.

TESTIMONY OF PETER HECK ON CROSS EXAMINATION.

That the mother of the Halbert boys—of Hilary Halbert—that is Lanie Ford Halbert, was born at Jamestown, just beyond Rochester, on the river side; that when he speaks of upper he means the Chehalis River; that the Upper and Lower Chehalis tribes are two different tribes and speak different languages; that he can understand the Lower Chehalis Indians; that Lanie Ford Halbert was older than he is but he learned from his Aunt Susan, Lanie Ford Halbert's mother, that she (Lanie Ford Halbert) was born at Jamestown on the Chehalis River.

TESTIMONY OF PETER HECK ON RE-DIRECT EXAMINATION.

That the reason he understands the Lower Chehalis Indians is because he speaks the two languages; he can understand the language of the Lower Chehalis, but some words he cannot understand. [384]

TESTIMONY OF SAMPSON JOHNS FOR THE DEFENDANT.

Sampson Johns testified that his name is Sampson Johns; that he is a member of the Quinaielt tribe of Indians.

(An interpreter is asked for and Harry Shale, agreeable to plaintiffs and defense is sworn as interpreter.)

That he lives at Copalis Beach and belongs to the Lower Chehalis Indians; that he knows the mother of the Halbert boys and saw them when they first arrived on the Lower Chehalis; that when he first saw her she was married and had one baby; married to a white man; does not know exactly where they went but he saw them at Cosmopolis heading toward Hoquiam; that she was the grandmother of these plaintiffs, Hilary Halbert, Jr., Dorothy Halbert and Mildred T. Halbert; that he knows that the grandmother of the Halbert children in the court room (plaintiffs) belonged to the Upper Chehalis Indians; that he knows the grandchildren and great grandchildren belong to the Upper Chehalis tribe because they have no blood relationship in the Lower Chehalis. (the names of the six plaintiffs, Hilary, Jr., Dorothy, Mildred, Vernon Sidney, Frederick

Rich and Sidney E. Halbert, having been specifically mentioned in the questioning).

TESTIMONY OF SAMPSON JOHNS ON CROSS EXAMINATION.

That he was born at Lower Grays Harbor near Campbell's Slough; that his father was a lower Gray's Harbor Indian and his mother was a Chinook; that he (the witness) was never adopted into the Quinaielt tribe. That he was allotted on the Quinaielt reservation; that he is married and his wife belongs to Tumwater. [385]

(On stipulation of both parties and agreement it is assumed and conceded that the Lower Chehalis tribal Indians are entitled to allotment on the Quinaielt reservation.)

Sampson Johns further testified that his wife is from Tumwater, near Olympia; that his wife's mother married an Upper Chehalis Indian and remained there; that his wife is allotted on the Quinaielt reservation; that she belongs to the Upper Chehalis tribe of Indians; that he has a homestead and lives on it; that he can understand the Upper Chehalis people when they talk to him in the Indian language, but there is some difference in their language; that in the old days they were divided into two tribes and there was always lots of trouble between them; that his wife was not adopted into the Quinaielt reservation but got in through him (through marriage). In the early days he used to go fishing around Bay Center, Shoalwater Bay and the Columbia River, but that the last time he was over at the Columbia

River was over 20 years ago; that his father's people are all from the Columbia River grounds, his father being a Chinook and having lived at Chinook Beach; that he has one living brother, Johnnie Johns who is also allotted on the Quinaielt reservation; that he was not born on the Quinaielt reservation and does not now live there; that he goes to the Quinaielt reservation quite frequently, as he has his children living there who have their homes on the Quinaielt reservation; that he merely goes to visit; that he has no fishing location at Quinaielt.

TESTIMONY OF SAMPSON JOHNS ON RE-DIRECT EXAMINATION.

That in the early days there were different bands of Chinook Indians, but *now* now; that his father belonged to the band that lived where the McGowan plant is now [386] located; that when an Indian woman married out of her tribe according to the Indian rulings, she loses her rights with her own tribe and gains her rights with the other tribe.

TESTIMONY OF SAMPSON JOHNS ON RE-CROSS EXAMINATION.

That he, (the witness) does not know of any pure-blood Chinook Indians except himself and a few others such as George Charlie and his children; they have died and there is considerable intermarriage between the Chinooks and the Lower Chehalis and Upper Chehalis with the tribes around Grays Harbor.

(Cleveland Jackson here sworn as an interpreter by the Plaintiffs and changes the interpretation of the last question and answer as follows:

That there was considerable intermarriage and mixed up in the most of them all at Taholah. Considerable marriage but most of them lived at Taholah, that the witness does not know his age.

TESTIMONY OF WILLIAM MASON FOR THE DEFENDANT.

WILLIAM MASON testified that his name is William Mason; that he is a member of, and the headman of the Quinaielt tribe; that he knows that Sidney E., Frederick Rich, Vernon Sidney, Mildred T., and Hilary Halbert, and Dorothy Hubble are the children of the Halbert boys; does not know them, but does know the old people; that they are not members of the Quinaielt tribe but are Upper Chehalis Indians; that he does not know if they have been adopted into the Quinaielt tribe.

(Here admitted by Plaintiffs that they have never been adopted into the Quinaielt tribe.)

[387]

That he does not know how they, the Halberts, came to be in; that his father did not tell him; that as the Chief and head of the Quinaielt tribe he does not consider the children of the Halbert boys as members of the Quinaielt tribe.

TESTIMONY OF WILLIAM MASON ON CROSS EXAMINATION.

That he does not know anything about the children of the Halbert boys as he never heard anything about them whether they belong to the Quinaielts or not; that that is what they want to know—how they got

in— his father never let him know and they never adopted them into the Quinaielts.

TESTIMONY OF WILLIAM MASON ON RE-DIRECT EXAMINATION.

That the old people (the Halberts) Fritz and Hilary, and the other fellows "belongs—they got allotments at Quinaielt, that is, Fritz and Hilary and the other fellows, you know; that is all I know and I don't know how they got in." That he (the witness) has an allotment on the Quinaielt reservation but does not know if the Halbert boys got theirs for the same reason he got his.

TESTIMONY OF WILLIAM GARFIELD FOR DEFENDANT.

That he is William Garfield; that he is a member of the Quinaielt tribe; that he does not know Hilary, Jr., Dorothy Halbert Hubble, Mildred, Vernon, Frederick Rich and Sidney E. Halbert; that he only knows Fritz and *Phoeve* Halbert, who lived at Taholah for a while; that he does not know their children and if he has seen them he has never talked to them; that he does not consider them as members of the [388] Quinaielt tribe.

TESTIMONY OF GEORGE CHARLEY FOR THE DEFENDANT.

That his name is George Charley; that he does not live on the Quinaielt reservation, but considers himself a member of that tribe as his mother was a Quinaielt Indian and his father was half Quinaielt; also "because in the nature of the Indians, they belong to the four tribes four different tribes in the

olden times—that is the higher people." That he considers himself to be of the Quinaielt tribe but doesn't live there. That he knew Susie the grandmother of Ernest and Frederick and *Phoeve* Halbert but does not know the younger Halberts (the plaintiffs herein having been named individually) and does not consider them as members of the Quinaielt tribe; that according to the old history of the Indians Susie belongs to the Kwaiailk, now known by the white people as the Upper Chehalis; but there is now no such thing as upper Chehalis; that the name of that tribe originally was Kwaiailk; that in olden times the tribes now known as Upper and Lower Chehalis had a boundary known as Coqualum; that they do not speak the same language; that when an Indian married out of her tribe she simply let go of her original tribe and became part of her husband's tribe, but can be reclaimed by her own tribe and is always welcome to join her original tribe.

TESTIMONY OF GEORGE CHARLEY ON CROSS EXAMINATION.

On cross examination he testified that he lived over at Georgetown on the little reservation there, but has traveled around a great deal; that he has lived on the Columbia River, sometimes at McGowan's, Peacock Pit and [389] Sand Island in the summer time only; that he has lived at Tokeland, Georgetown, a little reservation sometimes called Shoalwater Bay reservation and the place named after him, "Georgetown," since 1862; that all the Indians at Georgetown are allotted on the Quinaielt reservation; that he lived at Georgetown when allotted on the Quinaielt

reservation; that he was born in 1862; that he is familiar with the Indian meeting that was held just previous to the Quinaielt Treaty from his ancestors; that the Indians at the meeting included the Clatsops, Chinooks, Squalmish, Chehalis, (Upper and Lower) Quileutes, Quinaielts, Humptulips, mostly called Chehalis now; that in the olden *ways*, but not originally, he is mostly called Chinook; that his father was born at Chehalis Point called Westport, on Grays Harbor; that his mother was born in Quinaielt; his grandmother, on his mother's side was born at Humptulips; that his grandfather on his father's side was born at Chehalis Point; that he makes a habit of fishing on the Columbia River, the only place he can make a living; that the usual fishing places for the Quinaielts and Chehalis on the Columbia River was Sand Island and McGowans and that the Indians have fished on the Columbia ever since the fishing industry became profitable to the white people and before that in the summer times they went to Shoalwater Bay to pick oysters, but the southern tribes did not go to the Quinaielt to fish; that the movement of the Indians for fishing was from the north down; that his wife is allotted on the Quinaielt reservation; that she lived with him at Georgetown, but they were at Quinaielt temporarily; that they had never made their residence on Quinaielt because he could not make a living there; that the Chehalis Indians don't consider to be fish-eating Indians; they live on fish, but don't consider to be fish-eating Indians; the Chinooks and [390] Indians around Grays Harbor are fish-eating Indians, and the Quinaielts and the tribes around Shoalwater Bay.

TESTIMONY OF GEORGE CHARLEY ON REDIRECT EXAMINATION.

That the Upper Chehalis was originally called Kwaiailk and the dividing line was called Coqualum, above what is now called Elma.

TESTIMONY OF GEORGE CHARLEY ON RECROSS EXAMINATION.

That the Upper and Lower Chehalis names were applied by the white people later on.

TESTIMONY OF GEORGE CHARLEY ON RE-REDIRECT EXAMINATION.

That there is no such name as Upper Chehalis, but they are known now as such by the white people, but they were two different tribes—enemies.

TESTIMONY OF GEORGE CHARLEY ON RE-RECROSS EXAMINATION.

That although the Upper and Lower Chehalis do not speak the same language just a few can understand each other; they cannot understand each other very well.

TESTIMONY OF GEORGE CHARLEY ON QUESTIONING BY THE COURT.

That the Indians above Elma, spoken of as the Upper Chehalis, fished in a different manner from the Indians lower down; that the Indians in Taholah, the Quinaielt, they fish would drift in, and in the Chinook tribe they seined, but this Upper Chehalis they set and used willow traps—didn't use a cord of any kind—they set traps in the summer time; that

the Upper Chehalis Indians had many horses and used horses for transportation and the Lower Chehalis Indians transported by canoe. [391]

TESTIMONY OF W. B. SAMS—RECALLED FOR DEFENDANT.

W. B. SAMS testified that he is Superintendent of the Taholah Indian school. Being shown Plaintiff's Exhibit No. 2 (Description of Selection for allotment) testifies that

"In the fall of 1923 when the case of Thomas Payne versus the United States was decided, and it appearing that allotments would again be made on the reservation, large numbers of people—Indians, part Indians and full bloods and all who believed they had a right on the reservation to allotments—came to the office and wanted to make their selection in view of getting an allotment. That I explained to every one that ever called at that office that it was against the policy of the Indian office to make allotments and I did not know whether allotments would be made any further; also advised them I did not know whether I had the authority to make selections of this kind and that I might be directed by the Commissioner of Indian Affairs to later on dispose of them and I signed with that understanding with everyone that came to that office—some were on the roll—some were not." That he notified each plaintiff in this case later that that particular exhibit was of no effect; that the notice he received from the Indian Department is on file in his office at Hoquiam; that he held tribal meetings with the Quinaielt tribes for the purpose of adopting members of other tribes;

that he served a notice—published a notice of tribal council meeting, and among the names published to be presented to the tribe for adoption was the name of Rich Halbert and he met with the business committee of the tribe before the meeting and asked them to allow him to present his name (Rich Halbert's), but the committee declined to allow Rich Halbert's name to be put up; they [392] declined to allow Rich Halbert's name to be put up; they refused because they did not want him; several others were refused at the same time; that it is not necessary that a man be a member of the Quinaielt tribe to run boats on Quinaielt Lake; that white people are allowed to operate boats there.

TESTIMONY OF W. B. SAMS ON CROSS EXAMINATION.

That there were eight or ten names on the list on which Rich Halbert's name appeared (he has a copy of it) and the tribe passed upon the list and he thinks some of them were adopted; the meeting set then was postponed to a later date; that Plaintiff's Exhibit No. 2 and the various exhibits relative to those selections, is dated November 30th, *19231*, that it was typewritten, probably by some girl in his office who followed one of the forms; that one of the girls in the office prepared the forms for the Indians and they signed them and they were brought to him and he signed them as to the date they filed; that he did not state "duly enrolled," simply that he filed it; that the statement "duly enrolled" was made by the Indian. That on the adoption list he put up only the one Halbert name—that of Rich Halbert; *they* they

had not asked him to put the boys' names on and the name of Rich was put on because his father was at his office and asked him (the witness) to put Rich's name on; the rest made selections, but didn't ask to have their children adopted; that Fritz asked him to put Rich's name on the list and "I wanted them to say he was entitled." That Rich was dropped from the roll in 1919 and that he did not certify in 1923 that Rich was enrolled; that he signed a statement that Rich filed with him on a certain day, and a certain hour. A Quinaielt Indian either has to be recognized by the tribe [393] or adopted, whichever you want to call it, and his suggestion *regard* Rich to his father was that Rich should be adopted; that he told him it was in his (the witness') opinion, the only way he could get an allotment, by being adopted; that he told Rich's father that.

TESTIMONY OF W. B. SAMS ON REDIRECT EXAMINATION

That he also told the rest of them the same thing—that it would be necessary for them to do that to get allotments; that he knew later that they got an attorney at that time or shortly thereafter to proceed in another way than the one he had suggested; that he did not request any of the Halberts, or any one to come in and make selections for allotments; that he did not have to ask anybody; that they came with a rush from all over the country.

TESTIMONY OF CHARLES E. ROBLIN FOR THE DEFENDANT.

Charles E. Roblin testified that he is Special Allotting Agent in the Indian Service of the United

States Government; has been in the Indian Service since August, 1903, and his first work as Allotting Agent was in October, 1907, and in the interval between then and now has been engaged in the allotting work concerning the Quinaielt reservation; that the essentials and pre-requisites to allotments "are prescribed by law and very well defined by interpretations of that law from the Department and from the Court—from the Interior Department, and they vary under different circumstances and under different laws; that there is no departure from the general rule as to their application in the course of departmental procedure as applying at all to the Quinaielt situation; that "what is known as the General [394] Allotment Act is the first Congressional Act of general application specifying the requirements and conditions under which allotments on Indian reservations should be made and the Quinaielt reservation is being allotted under the allotment laws of the United States which includes the General Allotment Act and its amendments. The second section of the Act mentions the Article 6 of the Omaha Treaty. The procedure is there laid down step by step." That it has always been held that to qualify an applicant for allotment of land on the Indian reservation, he must be recognized as a member of the tribe having rights on that reservation, for which that reservation is set aside; that as to the word "recognized" that matter had been variously interpreted and he does not know of any decision or rule that has been laid down that confines the matter strictly to any one set of conditions; conditions vary on the different reservations. Usually, however, it is taken to be required that they

be recognized as a member of the tribal organization; that is, the tribal organization must have recognized the person as a member of that tribe. "In some instances that means to be recognized by the headmen" and in some places general recognition by the tribe, and in other cases a tribal business committee is recognized and action by that business committee is usually taken by the Department as sufficiently advisory to warrant approval. In the case of the Quinaielt, I don't believe that the Department ever specifically ruled that a business committee should have control of tribal membership, it generally being held that the whole tribe should act in general counsel." That where an Indian is born on a reservation, his parents being recognized members of the tribe in their own rights, the child being born in tribal relationship (or, on the reservation) he does not believe any action in the way [395] of any council passing upon the child's title would be necessary. In the case of a child born of Indians on both sides (both mother and father being Indians), but away from tribal surroundings, or off the reservation, it would indicate that at the time of the birth the mother, at least, was not living in tribal relationship at that time and, presumably, that she had abandoned tribal relationship, and if both the mother and the father were living in that condition off the reservation and there was any objection on the part of any of the tribe, no officer of the Government would be warranted in enrolling that child without securing the sanction of the tribe and approval of the Secretary of the Interior.

That the practice as to the keeping of census rolls has varied in the different reservations (he having

worked with census rolls on over 30 reservations); in some jurisdictions the census roll is not taken as the best roll of membership. The official, such as the Allotting Agent, coming on the reservation, will look to other rolls or records rather than the census. That that is particularly true in issues of tribal property made to all the members of the tribe as the distribution of the tribal property. In such cases the occasional payment rolls are the best evidence of tribal membership. In some jurisdictions no such payments are made and the census roll then is frequently taken as the best evidence of tribal membership, but the Department is somewhat in doubt as to the exact weight to put upon the census rolls because the practice does vary so much; that unquestionably in those jurisdictions and at those agencies and in those tribes where annual or other period payments are made, the census rolls would be in better condition, tested out, than in jurisdictions where no payments are [396] because with careful administration these census rolls are revised and *rbought* up to date from any payment rolls prepared during the interval and greater care and caution would have to be exercized in entering a name on such a roll, and due justification made in dropping one from such a roll; that he has never known of a payment of that sort being made on the Quinaielt reservation and the census rolls of the Quinaielt reservation have not been checked up in that manner by period payments; that frequently in many tribes of Indians, tribes have taken into membership those who, if not Indians, were of alien blood and known to be of alien blood and were aken into the tribe because of favor or services, or because of

a liking towards the individual on the part of the tribe, and witness believes that has been done in the case of the Quinaielt tribes.

That after a tribal council has passed upon—either approving of or disapproving of a candidate for membership, the practice being that such action of a tribal council shall be taken at a meeting called by an officer of the Government, the proceedings of the meeting are put in writing, certified to by the official presiding at the council and that record transmitted to the Commissioner of Indian Affairs with a *tecommendation* from the presiding official as to whether or not the action of the council should be approved; that, then, must be passed from the Commissioner of Indian Affairs to the Secretary of the Interior with appropriate recommendations and the approval or disapproval of the Secretary of Interior then becomes final. That the Indian office has prescribed certain set questions and information which must be supplied by the applicant, usually requiring that those questions be answered in writing on forms provided, although it is not necessary; a typewritten form can be prepared substantially [397] complying with those requirements. A further requirement is that the statements of the applicants must be corroborated by those of two or more witnesses, sworn to, and these accompany the report and the proceedings of the council so that the reviewing officer in Washington will have something substantial to work upon. Then, all that having been done, and assuming it is done favorably to the petitioner or applicant, then the applicant becomes, under order of the Secretary, an enrolled member of the tribe, if that is the action of the council.

In some cases the tribal councils take action that a certain applicant shall be considered entitled to a certain proportionate share of the tribal property and that only for instance in an allotment and that they be not adopted into the tribe as a full member and entitled to all the rights, privileges and emoluments of such a member, but if the adoption has been unconditional the course is usually as that outlined; the approval of the Secretary of the Interior will warrant the officials in charge of the tribe to place that person on the tribal roll; that frequently there is a distinction between title to enrollment and title to allotment; the one does not necessarily include the other; in the immediate cases on trial, that that is asked for by the plaintiffs is allotment, not enrollment with the tribes.

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION.

Charles E. Roblin testified that he did not know whether an Indian can sue for enrollment or allotment or not.

Q. Don't you know he does not have to sue for enrollment?

A. I do not. I know not in this case though.

That in his work of allotting on the Quinaielt reser- [398] vation he has had to *resot* to the proper authorities under which allotments were being made on the Quinaielt reservation; that in the *Uniter* States there are three kinds of reservations, designated differently because of the authorities under which created; the "Treaty Reservation," "Executive Order Reservation" and "Congressional Act Reservation."

The "Treaty Reservation" was created in compliance with the Treaty Agreement between the United States and the Indian tribe; the "Executive Order Reservation" is one that has been set aside for the use of a tribe of Indians or for certain Indians in a certain district by the President without complying with any particular Treaty; and a "Congressional Act Reservation" is one specifically set aside by an Act of Congress. The Quinaielt reservation has a dual status. It is a "Treaty Reservation" and also an "Executive Order Reservation." The Treaty of 1855 and of 1856 provided that a tract, or tracts of land, would be set aside for the use of the Indians taking part in that Treaty, and a small reservation was surveyed in 1861 in compliance with that. It was found inadequate for the use of the Indians and the Superintendent of Indian Affairs then in charge of Western Washington, recommended that that be increased in size, which was approved and passed on to the President, and on November 4th, 1873, the present Quinaielt reservation was created by Executive Order, specifically stating that the Executive Order had two objects: First, in compliance with the Treaty of 1855 and 1856 with the Quinaielt Indians in Western Washington; and, second, to provide for other Indians in that locality. Now, as to the Indians taking part in that Treaty, it becomes a Treaty reservation and as to the other Indians in that locality [399] an Executive Order Reservation; the Executive Order set aside a certain tract of land which is the present reservation for the use of the Quinaielt, Quileute, Queets--those are all tribes that took part in the Treaty, and for other tribes of fish-

eating Indians in Western Washington. As to the other tribes of fish-eating Indians of Washington, it is an Executive Order reservation; as to the Quileute, Quinaielts and Queets it is a Treaty reservation. Then, the Act of 1887, the General Allotment Act, was passed authorizing the President to find advantages to the Indians to make allotments on any reservation whether created by Treaty or Executive Order or Act of Congress, and under the authority of that General Allotment Act the Allotment of the Quinaielt reservation was undertaken in 1905 and the first allotment schedule submitted in 1907, containing 119 names; the second allotment schedule was submitted in 1908 containing over 327 names, and the third schedule was submitted in August, 1910, containing some 300 names; that was approved in October, 1910. Due to controversy as to just who and what tribes were entitled to allotments on the Quinaielt reservation, on the existing laws, the Act of March 4, 1911, was passed. Thus, an Executive Order creating the Quinaielt reservation issued on November 4, 1873; a later Executive Order created a small reservation for the use of the Quileute Indians at the mouth of the Quileute of 738 acres on February 19, 1889; another small reservation created for the Hoh Indians at the mouth of the Hoh River on September 11, 1893, about 640 acres; a third small reservation was created for the Osette Indians at Osette Lake, south of the Makah reservation, on April 12, 1893; about 600 acres. The question arose as to whether these Indians for which the small reservations had been thusly created, had thereby [400] forfeited their right, or any rights they might have or have had, to

allotments on the Quinaielt reservation, it being contended that they be required to confine their allotments to the small reservations and to settle that question the Act of March 4, 1911, was passed, which provided that allotments should be made to all Indians of the Quileute, Hoh, Queet, or those Indians who were affiliated with the Quinaielt and Quileute Indians in 1855 and 1856 and who elected to take a reservation on the Quinaielt reservation rather than on the reservation created for the respective tribes; that settled the question so far as Congress could do so; that in his work he has considered that the Act of March 4, 1911, did not confer any rights not previously existing, but that it has confirmed the pre-existing rights to those Indians who were affiliated with the Quinaielt and Quileutes in the Treaty to them and perhaps further define who were affiliated with those Indians at the time of the Treaty; that in 1916 the Indian office assigned him to special work in Western Washington, with instructions to call a council of the Indians of the Quinaielt reservation and consult with them, and the old members of the tribe, the headmen of the tribe, to secure an expression as to their understanding as to what tribes had affiliated with the Quinaielts and Quileutes in making the Treaty. On December 12, 1919, he presided at such council with about 70 or 80 in attendance and quite a number of the old men told their recollection of what had been told them; this was all incorporated in a report to the Secretary of the Interior and eight or ten of the chief men of the tribe signed the statement; they stated the Indians affiliaed with the Quinaielts and Quileute Indians in 1855 and 1856

Treaty were the Hohs, Queets and the Humptulips, and specifically stated that the Chehalis [401] Indians did not affiliate with them in making the treaty. That he understood that Judge Campbell made *thate* statement that one Chehalis or Humptulips Indian named "John" had signed the Treaty; that the only name of "John" on the Treaty (indicating a book taken from the table) was one whom he had been unable to identify as belonging to any particular tribe; the question had been before the Solicitor of the Interior Department and on September 2, 1916, he rendered an opinion which somewhat clarified the situation as to what *trives* or bands of Indians were entitled to allotments on the Quinaielt reservation. On September 2, 1916, the Solicitor for the Interior Department gave an opinion on that question.

TESTIMONY OF CHARLES E. ROBLIN ON REDIRECT EXAMINATION.

That the Act of 1911 is the latest Act having to do with the Quinaielt reservation as far as he knows; that from his best knowledge from a study of the Treaty, etc., the signators to the Treaty of 1855-1856 are the Chiefs, Headmen and delegates of the different bands and tribes of the Quinaielts and Quileute Indians in Western Washington; that in 1855-1856 an Agreement was reached (as previously testified) between representatives of the Government and of the tribes that met at Cosmopolis, but not signed, and later a few men of the tribe went somewhere and signed a paper purported to be a Treaty; that without explanation that does not look so good; that the Chinooks, Cowlitz, Chehalis, Quileutes and Quin-

aielts, Hohs and Queets were all at the meeting at Cosmopolis in 1855, and all associated in preliminary arrangements in making that Treaty; that history shows that the Chinooks, Cowlitz and Chehalis Indians refused to sign [402] that Treaty and that the Treaty as finally drafted and signed was made at Olympia by the men whose names appear in this report of it; but that in Mr. Swan's book published in 1857, two years after the Treaty, on Page 345, an explanation of the failure of the Chinooks, Cowlitz and Chehalis Indians to sign that Treaty is given, being, briefly, that they, the Chinooks, Cowlitz and Chehalis Indians, understood from the Governor that the reservation to be created for all parties would be located in the Quinaielt country, and they did not want to go there, because they were not friends, and if they (a Chinook leader speaking) went north among the other tribes they would fight and soon all be killed," and this same idea was expressed by all and repeated each day of the tribal council. So they tore up the Treaty and refused to sign it. The statement as it appears on page 345 of Swan's report of that Treaty in "The Northwest Coast or Three Years' residence in Washington Territory" was an extract from the speech of one of the Chinook Chiefs and repeated by all.

Speaking with reference to where, if at all, the Pacific Coast ends, he testified that "so far as pertinent it is taken in connection with the expression the "fish-eating tribes of the Pacific Coast" and the Solicitor for the Interior Department on September 2d, 1916, rendered his opinion that it should be confined to the Indians of the immediate Pacific Coast who

are fish-eating Indians, extending from the south side of the Makah reservation to the south of the Columbia River, and intimated that it was confined to such tribes that drew subsistence almost wholly from the water; that his recollection is that the Solicitor stated that it did not include the Chehalis country and a separate reservation was created for the Chehalis Indians; such as George Charley testified about in answer to a question whether he had an allotment on the Chehalis reservation and he stated he had a homestead. The Chehalis reservation was a collection of Indian homesteads contiguous to such an extent that it was afterwards withdrawn and set apart as an Indian reservation, but the inception of the Indian ownership was that of homesteading under the Indian Homesteading Law; that he could not state positively whether anything was included in that reservation that had not been homesteaded, but can state that the Executive Order provided for the purchase of a certain piece of land which was under white ownership and adding that to the tract of land set aside for the Indians; that there was about 400 acres set aside for school maintenance purposes within that reservation, and administrative purposes at the time of the confirmation of the reservation by the Executive Order; that the original of the Treaty signed by ten or so headmen of the Indians is on file in Washington, D. C., but a copy is available at his office—referring especially to the statement from the headmen of the Quinaielt tribe as to who were associated with the Quinaielts and Quileutes in making the Treaty, being incorporated in his report of January 19, 1919.

TESTIMONY OF CHARLES E. ROBLIN ON RE-CROSS EXAMINATION.

That he is as well acquainted with the purposes of the Executive Order enlarging the Quinaielt reservation from 10,000 to 250,000 and 300,000 acres, as possible, from records on hand in the local Indian Agent's and Indian offices, and the office of the Secretary of the Interior; that it was the purpose of the United States Government in the early 50's to make Treaties with all Indians of the United States, and in compliance with that purpose, instructions were issued to the Superintendents of Indian Affairs in charge of the [404] different districts, to make such treaties and in compliance therewith, Governor Stevens traveled all over Washington, Oregon, Idaho, Montana, part of the Dakotas and part of Wyoming and made Treaties with the Indians, his desire being to secure treaties with all Indians in different parts of the country and place them on reservations and in compliance with that plan he desired to have a Treaty made with the Indians of Southwestern Washington, providing a tract of land to be set aside for their use; that Governor Stevens called together the Upper and Lower Chehalis, the Quileutes, Quinaielts, Chinooks, and the Hohs at a great meeting at Cosmopolis; that he does not believe this reservation was especially enlarged by the Executive Order for the purpose of repairing any supposed injury and to help out the Southwestern Washington Indians; that there are approximately 195,000 acres in the Quinaielt reservation as enlarged by the Executive Order, virtually all allottable land, and would allot approximately

2200 Indians, giving each allottee 80 acres; that at the time the Treaty was made he did not believe it was the idea of the Government, nor at the time the Executive Order issued setting aside the reservation as at present constituted and for a period of some years later, perhaps ten to fifteen years, to allot Indians in the present way; that the Treaty provides in its 6th Section that the Government could assign to Indians certain tracts of land for their homes to be occupied under the same provisions and regulations as were provided in the 6th Section of the Treaty with the Omahas passed in 1854, which Omaha Treaty provides that land can be assigned to Indians or heads of families who desire to avail themselves with the privilege and right, and it is essentially a settlement Act as distinguished from an Allotment Act, which requires actual settlement on the land and prescribes that the [405] continuous ownership of the land; that the Allotment Act as at present constituted was not put in shape of legislation until 1901; the whole course of assigning and allotting lands to Indians up to the passage of the General Allotment Act of '87 was a desire to get Indians to live upon the lands, and essentially a Settlement Act. The Act of 1887 provided that residence was not necessary; that he is familiar with the Allotment rolls of the Quinaielt reservations; that there had been some Satsop Indians allotted on the Quinaielt in years gone by, and Humptulips, Chinooks, Bay Center Indians, Lower Chehalis, but he does not know what Upper Chehalis were; that in the case of Mrs. Halbert, she was an Upper Chehalis Indian; that he does not concede that the Government has recognized, in allotting all

those tribes on the Quinaielt reservation, the tribes gathered at the Cosmopolis meeting; nor that they have been allotted without being adopted, with the possible exception of Cowlitz; that a great many of the other tribes were allotted before he came in there without the necessity of being adopted; that the superintendent certified to him the last schedule prepared and forwarded by him to Washington and that that schedule did carry names of members of those various tribes:

Q. In the last schedule you have made up, you have allotted people belonging to all these different tribes and offsprings of those allottees described in the first allotment, have you not?

A. I don't know. It is not within my jurisdiction to decide; that it is in the jurisdiction of the Superintendent who certifies to him and that he (the Superintendent) certified them to him as allotments.

That he has no reason to doubt the testimony of the old Indian just previously given, that he was a Chinook Indian and his wife an Upper Chehalis, but had been allotted [406] on the Quinaielt; and that perhaps a small proportion of those allotted live or have lived on the Quinaielt reservation; that tribal organization is on a much more stable basis now than it ever was prior to 1908; that in the case of a child born to Indians, both the father and mother being full blood Quinaielt Indians with no question as to their nativity and living in tribal relations and affiliation, the regulations issued by the Indian office and approved by the Secretary of the Interior authorizes the superintendent to enroll such a child without question; that there are many tribes of Indians entitled to allotment on the

Quinaielt reservation who are neither Quinaielt Indians nor allotted on the Quinaielt reservation.

In a case similar to the present cases of the Halbert boys, where they have been carried on the rolls for years, to secure an allotment it would be necessary to first go to the Superintendent and ask him to certify them to the Allotting Agent, or else, if he would not do so, take it over the Superintendent's head and go to the Secretary of the Interior direct; but if they exhausted that possibility he presumes they would sue for it; that he does not know of any Humptulips or Wynooches allotted on the Quinaielt reservation; that the Humptulips originally habitated the mouth of the Humptulips River on the north of Grays Harbor and designated more frequently as Grays Harbor Indians than as Lower Chehalis; that he believes that the statement on Page 578 Vol. I of American Ethnology under the head of "Humptulips" reading "meaning 'chilly region' A body of Chehalis on a river of the same name emptying into the Chehalis River, Washington, under the supervision of the Puyallup School Superintendent and Number 21, in 1904" he believes to be true. Also that he believes it to be true that the Satsop Indians are usually [407] classed under the collective term of Lower Chehalis; but that his understanding has been that the small remnant of Wynooche Indians had a larger mixture of Chinook than Chehalis blood; that he thinks the statement in "Handbook of American Indians, Part II, Page 418, under head of "Salishan Family" stating that

> "Chehalis group embracing six dialects, which show considerable variation. These are the Quinaielt and Quaitso of Northwest Washington;

> Humptulips of north part of Grays Harbor; Lower Chehalis of Gray's Harbor and Shoalwater Bay; Satsop east and northeast of Grays Harbor, upper Chehalis east of Shoalwater Bay; and Cowlitz on river of that name southward to Columbia River."

is correct as to all except the Cowlitz, but he does not think they should be included; that it is his understanding that "Chehalis" is the larger term including these different tribes; that in 1910 the United States Government published a book "The North American Indians", being the result of the study of the 1910 census and in one table divided the Indians of the entire North America into certain linguistic stocks and classified the Salishan family as including the Chehalis group, stating the group obtained its name from the dominant tribe, which was "Chehalis" classifying the Quinaielts, Chinooks, Humptulips and Indians around Grays Harbor and Upper Chehalis in that group of *Chechalis* Indians which corresponds with the excerpt taken from the *Handbookd* of American Indians before quoted, with the exception of the Cowlitz;

That possibly half a dozen of the Indians at Quinaielt are living on their allotments; that the Act of 1911 was passed to provide for the same things as was the Executive Order of 1873; they were passed and supposed to *ne* in conformity one with the other, for the purpose of clearing up a controversy as to whether or not the subsequent creating of small reservations for Osette, Quileutes and Hoh [408] tribes, would bar them from exercising their treaty rights under the Treaty of 1855-1856—not for the purpose of one re-

pealing the other; that the Opinion of the Solicitor made in 1916, wherein as he says "that the fish-eating Indians of the Pacific Coast are not intended to include all the tribes or bands, but those Indians of the Pacific to the mouth of the Columbia River" is absolutely in conformity with the recommendation of W. W. Miller, superintendent of Indian affairs in charge of Western Washington in 1865; recommending the creation of a reservation, exactly in conformity with the letter of the Commissioner of Indian Affairs to the President, and in conformity with the Executive Order.

That the names of those placed on the Quinaielt Allotment roll sent to Washington, are gotten from the Superintendent of the Taholah Indian Agency; that he does not feel qualified to state whether Indians other than Quinaielt Indians would be required to receive the recognition of the Quinaielt tribal council on applying for allotment on the Quinaielt reservation, although claiming to be an expert having stated that he understood all the rules and regulations pertaining to enrollment and allotment of Indians, it being out of his jurisdiction and in the jurisdiction of the superintendent, since the question as put to him, with the foundation laid, eliminates him as an expert in procedure, confining it to the exact conditions prevailing at the present time; that he does not recall any particular instructions made by the Department with regard to not allotting timber land on the Quinaielt reservation; that he recalls the case of Tommy Payne, a Quileute Indian; that Tommy Payne applied for an allotment, but does not know if the Superintendent informed Tommy Payne that the Department forbade

the allotment of timber-land; that Tommy Payne sued for allotment and got it and the principal question involved [409] was whether timber-land was allotted; that it is not his (the witness') understanding that it is necessary that Indians other than Quinaielt Indians must apply to the tribal council of the Quinaielt tribe before seeking allotment; that the tribal council called by him in 1919 was not a tribal council of Quinaielt Indians, but a tribal council of the Indians living on the Quinaielt reservation; that in his work he has been most particular to differentiate between the Indians of the Quinaielt tribe and the Indians of the Quinaielt reservation; that his records show that there were 64 adult Indians of the Quinaielt reservation present at that tribal council; that he does not think it would be necessary for members of the Lower and Upper Chehalis, or Chinooks entitled to allotment on the Quinaielt reservation under the Executive Order of 1873 and the Allotment Acts, and regardless of whether or not they are members of a particular band to seek the recognition of the Quinaielt tribe before being allotted; that his previous testimony was not based on the assumption that only members of the Quinaielt tribe have the say about allotment of land on the Quinaielt reservation; that it is not his belief that Indians whose names appear on the Quinaielt census roll for allotment, but who live at Bay Center, or elsewhere, would be required to appear before the Quinaielt tribal council for recognition before being allotted; and the same condition prevailing except that the applicant's name did not appear on the census roll of the Quinaielt Agency, it would be necessary for him to show recognition once existing by the tribe

to which he claimed membership; that is, it would be necessary for him to show he was a member and recognized as such, of [410] some one or several, of the tribes entitled to allotments on the Quinaielt reservation; that he has no documentary evidence showing that the names on the last allotment schedule were submitted to the Quinaielt tribal council for approval by it and does not know if any such exists; that since he has been allotting agent about 746 or 747 names have been submitted for allotment and allotted; that officially he does not know whether any of them were submitted to the Quinaielt tribal council, but personally knows that about 25 to 27 were submitted; that he does not know and has not examined the records sufficiently to state whether or not several hundred Chehalis and Shoalwater Bay Indians living about Grays' Harbor and Shoalwater Bay were allotted on the Quinaielt reservation on approval of the Secretary of the Interior without making application and that trust patents were issued;

Q. Do you not know as a part of the history of that agency that Mr. H. H. Johnson, the Superintendent then in charge of the Agency, was sent down to Gray's Harbor and Shoalwater Bay after these trust patents were issued for the purpose of urging upon these various Indians which belong to four or five different tribes, the advisability of accepting their trust patents on the Quinaielt reservation?

A. I have absolutely no knowledge of such.

That in his testimony with regard to the procedure necessary for an Indian to be enrolled, was with regard to the general rules and regulations applicable to reservations generally; that different situations do

not exist on the Quinaielt reservation by reason of the fact that a considerable number of Indians who might be termed outside Indians, or [411] Indians who live off the reservation, are entitled to, and have been allotted; that the general rules still apply; that certain variances in condition sometimes makes necessary Departmental ruling or interpretation, but the general rules apply to all reservations; that the opinion of the Solicitor talked of yesterday was dealing with a condition prevailing upon the Quinaielt reservation; that conditions similar to the Quinaielt reservation prevail on Fort Berthold reservation in North Dakota where three different tribes are domiciled; Gros Ventre, Mandan and Arikara—there, because of racial differences, they have maintained distinct tribal organizations and their organizations are much more distinct and separate than those on the Quinaielt reservation. On the Yakima reservation in Washington, thirteen different tribes are domiciled and several of those tribes maintain separate and distinct tribal organizations and for matters pertaining particularly to the tribes interested, they have their separate councils and meetings and take actions, but as to matters concerning the reservation in general, the property belonging to all the tribes, they take action at a general council; the Fort Berthold reservation, a Treaty reservation set aside for the three tribes, is almost identical in phraseology with the Executive Order setting aside the Quinaielt reservation for the various tribes entitled on that reservation.

That in the case of the grandmother of the plaintiffs and the father of the plaintiffs, having been allotted on the Quinaielt reservation without being

adopted, that if the applicants—the children of such Indians—declined to have their names submitted to the tribal council or their names were refused on submission to the tribal council, [412] he would suppose they had a right to go to court in the matter;

Q. Is it not your contention that the Indian Department of the *Government can pass rules and regulations for the Government of Superintendent and Allotting Agent*—is it your contention that will, in effect, deprive an Indian who, under the law is entitled to an allotment on the reservation from securing his allotment?

A. Oh, no.

That over a period of 20 years he has worked on some 30 Indian reservations, allotting or assisting in the allotment of land; that many Indians of the 8th blood, and less, have been allotted; that the degree of Indian blood is not the test to the right of allotment; that if the Superintendent of an Agency refuses to certify the name of any Indian whose name is on the Quinaielt Indian reservation census roll and whose father applies for allotment for him, he contends it would be advisable for such a person to submit his name to the tribal council, and that then the approval of the tribal council must be approved by the Secretary of the Interior before allotment can be made; that he knows of no other way of getting an allotment under such circumstances, except by going to court;

Q. You testified, first, the General Statute dealing in allotments, *the Act of '87 known as the Daws Act*—was not this Act by Congress *designed and passed for the express purpose of breaking up tribal life and passed for* the purpose to *give to the Indians their*

lands in severalty so they could become individual citizens and make homes on the [413] *allotments rather than roam in camps and tepees?* Wasn't that the purpose of that Act?

A. If I answer "yes", I am putting that in the minds of the Congress I suppose.

Q. You testified as to all the legislation pertaining to allotments passed pertaining to this reservation. Wasn't that the purpose of that Act? Didn't the Circuit Court of Appeals hold that in the Oakes case?

A. It has been generally understood that is one of the links of the legislation leading to that end.

That it is his contention that an Indian qualified for allotment on the reservation without adoption, can be allotted even if he secretary of the Interior objects to him, even though he be on the Quinaielt census roll in case the Superintendent for any reason refuses to certify his name to the Allotting Agent; that even though the status of an Indian has been fixed by allotment, without adoption, it is still necessary that all of his descendants must be recognized or adopted in turn by the tribe in order to be allotted; that every case stands on its own, and the fact that the parent has been allotted is not conclusive as to the right of the child to be allotted; that is, if a full blood Quinaielt Indian woman and full blooded Indian man had been allotted on the Quinaielt reservation, and they had a son who had been allotted on the Quinaielt reservation, any minor children of that son would still have to be recognized as a member of one of the tribes entitled to rights in the Quinaielt reservation, but not necessarily recognized at a formal meeting of the tribe, or tribal council; that if he were

superintendent [414] of an agency he would exercise the same care in getting up a tribal roll, available for allotment purposes, as he would exercise in getting up a roll that involved the payment of tribal funds.

The Chehalis comprised a bunch of small bands around the lower part of the Chehalis River and also some of the tribes and bands that are around Grays Harbor and the bands that are around the lower part of Grays River about the location of the present town of Aberdeen and Grays Harbor in his designation includes the waters below that point to the mouth of the Grays Harbor where it empties into the ocean. The Upper Chehalis was on the upper reaches of the Chehalis River above Satsop and around the Black River. It is a fact that the Chehalis River which drained the territory occupied by these tribes enters into Grays Harbor, which is a bay entering into the Pacific Ocean.

TESTIMONY OF CHARLES E. ROBLIN ON RE-REDIRECT EXAMINATION

Referring back to previous testimony regarding the 6th Article of the Omaha Treaty characterized as the Settlement Act, Mr. Roblin testified as the development of this settlement act under the present allotment laws as follows:

That the Treaty with the Omaha Indians, made in 1854, was taken somewhat as a form and referred to in subsequent treaties with Indians; this provided that the President might assign to adult Indians, or heads of families, certain lands of the reservations that were to be reserved for the use of Indian tribes with whom the treaties were [415] made, to all those persons who

were willing to avail themselves of the Act and that contemplated that the Indians to whom the assignment was made, should go upon those lands, live upon and till some portion of them, providing assignment should be in varying proportions—one-eighth to adult persons, one-quarter section to heads of families, and further provided that if they did not live upon that land and till a certain portion of it for certain periods, their annuity payments, or any other payments could be stopped, until they returned to those lands and complied with the provisions, and if their absence continued, the assignment could be cancelled entirely and the same land assigned to other persons; that that theory runs through all subsequent legislation up to the Act of 1887, which is known as the General Allotment Acts, and it is illustrated by several special allotment Acts, which provides for assignments of land to the members of the different tribes for which the reservation had been set aside; a typical one being the Allotment Act of 1882, providing for the Crow reservation in Montana, providing that certain assignments might be made in the same areas practically as those provided in the Omaha Treaty. Then on February 8th, 1887, the General Allotment Act was passed providing that it should be allotted in a similar area, that is, to single adult persons, an eighth of a section and to a head of a family, a quarter of a section, and varying areas to Indians of different status, and in 1891 that was amended to provide for allotment to each member of a tribe, the same area, making no distinction between an adult person and a minor, or the head of a family, or with regard to the size of a family; The Act of 1891 [416] provided that each

member of the tribe should receive exactly the same amount of land—and that has been considered the development of the Allotment Laws.

That the reason he called attention to that in previous testimony was to call attention to the fact that in 1873 the idea of allotting lands on Indian reservations in equal amounts to each individual member of the tribe had not been developed—but that since 1887, as amended in 1891, the general procedure in allotment has been to allot to each individual member of the tribe regardless of the status; that under the Treaty in 1855-1856 and the Executive Order of 1873, there was no legislation to indicate that there would be a departure from communal life (speaking of communal life as distinct and different from communal interest in the tribe) affecting the Quinaielt reservation; that the entire course and policy of the Government has been to induce Indians to abandon communal life, and while the 6th Article of the Omaha Treaty provided for assignment of certain lands only for their use, it did state provision would be made handing the privilege of the same land to members of the family on the death of the head of the family; that the restriction on alternation of inherited land was removed February 28, 1892; The first Indian Homestead law was enacted in 1875—which provided it should remain inalienable for five years; an Amendment passed in 1883, provided that the homestead should remain inalienable for 25 instead of 5 years;

Speaking again with regard to the requirements, qualifications for allotment, Mr. Roblin stated; that the Treaties of which several hundred were made in the early 50's, were [417] all made with Indian tribes

and not with individuals; that all legislation in regard to Indian reservations and tribes have specified that the Acts apply to the tribes; that reservations set apart in compliance with treaties and executive orders have all specified having been set aside for the use of tribes of Indians, all emphasizing the idea of tribal property or communal property; from that has developed a general system of legislation designed to protect the interests of the tribes in that tribal or communal property; that as brought out by cross examination, the several subsequent Acts of Congress have provided that persons leaving the tribes for one reason or the other and assuming the habits of civilized life, would not forfeit their rights to the communal or tribal property; that was a provision of both Homestead Acts, of the General Allotment Act and a subsequent Act providing that Indian women marrying white men and assuming the habits of civilized life, would not thereby lose their right to communal or tribal property; still, subsequent legislation in (1907) 1897 provided that the children of an Indian woman so marrying a white man, and that marriage having been solemnized prior to that date, and she, herself, having been once recognized by the tribe, or having been recognized by the tribe as a member of it at the time of her death, or at the time of the passing of the Act, would be entitled to the same rights of communal property as she would have been; those Acts of Congress have encouraged and have been intended to encourage the Indians to leave their tribal life or communal and tribal habits and take up the habits of civilized life, and yet protects them in their tribal or communal rights to the

property of tribes of which they, [418] themselves were recognized as members.

That he knows of no legislation providing that the tribal members resident on the site of the tribal habitat shall in any wise suffer because they do not go into civilized life; that by the first Act providing for citizenship of an Indian by reason of Allotment, was the General Allotment Act of 1887, and that provided that a person born within the limits of the territory of the United States abandoning tribal life and assuming the customs of civilized life became a citizen, but did not thereby lose any rights as a member of the tribe. And the Act of June 4, 1924, provided that all Indians living within the territory of the United States were citizens of the United States but did not by reason of that forfeit their rights of tribal property;

That the Act of February 8th, 1887, in the 6th Section provides generally that an Indian who is a member of a tribe goes away from that tribe, takes up the habits and customs of civilized life, does not by so going away, lose or impair his right in tribal property; that the two Homestead Acts are the only ones the witness' recalls in the way of legislation preserving in an Indian who has so gone away from his tribe, his right by legislation in tribal property; one of the Homestead Acts provided that an Indian abandoning tribal life and making settlement upon land could homestead it; the other specifically extended to Indians of that condition, the rights of the Homestead Act, except no filing fee was required.

That the Act of July 7, 1897, provides that the children of a marriage between a white man and an Indian woman (by blood and not adoption), who was,

if then living, [419] a recognized member of her tribe, and who, if dead before that time (June 8, 1897) was at the time of her death recognized as a member of that tribe,—that such children and so qualified, should be entitled to rights in tribal property—and that that Act is typical of the general languages in legislation emphasizing the necessity for recognition by the tribe as a member of the tribe;

That that Act says that the children of such a woman, and not the grandchildren, are so entitled; that the question of whether "children" included "grandchildren" was taken care of fully in 172 Federal Report, 305, the Oakes case—and was restricted to "children;" that the dominant note in that decision was not that there were grandchildren, but that they were living in a city remote from the reservation and with all the habits of civilized life; that one phrase used in the Oakes case decision, opinion of Judge Vandeventer, was that "If Mrs. Andrews and Mrs. Bend, who were grandchildren in the case, had gone upon the White reservation and established a residence, as was claimed, it would not help them in any case as would be seen later."

With regard to the census rolls prepared in times past used in the Quinaielt reservation or Taholah Agency, the Taholah, or Quinaielt reservation, until 1915, was under jurisdiction of the Cushman School, the Cushman School being located at Tacoma, an Indian community, and Taholah is an Indian community; the site of Cushman was the site of the Puyallup reservation and the Puyallup tribes still own the site of the old Cushman School; Up to January 1, 1915, the Quinaielt reservation was under

[420] the jurisdiction of that superintendency and all the census rolls were prepared at the Cushman school; that includes the census roll up to and including 1914. Then, from 1915 on a superintendency was created having charge of the Quinaielt reservation and the Nisqually reservation, the Chehalis reservation, and all unattached and scattered Indians of southwestern Washington. For administrative purposes the agency was located from 1915 to 1922 or 1923 at Taholah on the Quinaielt reservation; then for similar administrative purposes and in order to bring the agency closer to the center of the location of the Indian tribes and reservations then under the jurisdiction of the Taholah agency, it was moved to Hoquiam, so that up to and including the census of 1914, the census was prepared at Cushman School, Tacoma. From 1915 up to the present time at Taholah Agency, up to 1922 at Taholah and from then on to the present time, at Hoquiam. That he is very familiar with those census rolls having used them a great deal in his work in 1916, 1917 and 1918, and since being allotting agent, has used them on up since 1925; that his jurisdiction is limited to entering what is certified to him as a list of eligibles or ineligibles, which certification comes from the Superintendent.

That with regard to the tribal council meeting called by him in 1918 and 1919, he now has the carbon copy of the report of that meeting with the old Indians which was had to determine what Indians were affiliated or associated with the Quinaielts or Quileutes at the time of the Treaty, in response to the Court's request. [421]

TESTIMONY OF CHAS. E. ROBLIN ON RE-RECROSS EXAMINATION

That he is not familiar with the Act of June 14th, 1852, 12 Stat. L. 427, revised section 2119, dealing with the habits of Indians adopting civilized life.

Defendant's Exhibit A-1, admitted in evidence (no objection being offered by plaintiffs:

Being a copy of a carbon copy of a report made to the Department by Mr. Roblin of the meeting called by him in 1918, of the Indians who could tell what Indians were affiliated or associated with the Quilleutes and Quinaielts at the time of Treaty.

That he did not know to what particular tribes the signers of the report of that meeting just above referred to, belonged—that his call for the meeting was addressed to the Indians of the Quinaielt reservation—not to any particular tribes, but the Indians of the Quinaielt reservation, and that he knows they were all Indians of that reservation, but not to what particular tribe each or any of them belonged, as that was not what they were interested in; that the instructions and from whom the instructions issued, when he was sent out on that errand to get that particular information appears in the paper just offered and admitted in evidence; that so far as he made notes thereof, this exhibit is a copy of what transpired at that meeting;

That prior to 1915 there was no agency at Taholah, but a sort of sub-agency in charge of one of the farmers, and a school-teacher—does not know just when the buildings were built, but when he was in them in 1916 they were new—that the first superin-

tendent was Mr. Garber; that it could not be possible he was the one who enrolled the children of the Halberts, since the rolls show that three [422] of the Halbert children were on the roll of 1913, which was prepared at Cushman School; that the 1914 census roll which was prepared at Cushman School bears a pencil notation containing the name of Frederick Rich Halbert.

TESTIMONY OF CHAS. E. ROBLIN ON RE-RE-REDIRECT EXAMINATION.

That from his own knowledge he does not know how the names of these three children of Hilary Halbert got on the rolls. They were on the rolls before he had anything to do with the census and were dropped from the rolls at a later date, after he had finished his work there.

TESTIMONY OF WILLIAM GARFIELD, RECALLED FOR THE DEFENDANT.

WILLIAM GARFIELD testified that he is a member of the Quinaielt tribe of Indians and that his father belonged to the Quinaielts; that he has seen the Treaty made between the Quinaielt and other tribes of Indians with the Government in 1855, and that his father was one of the signers of that Treaty; that his name was "John"; that his father was the only Indian thereabouts at the time the Treaty was signed that had an English name; that his father was a Quinaielt Indian; that the rest of the Indians had Indian names but his father, and they called him "John"; that he does not now consider Hoquiam an Indian village; that he goes to Hoquiam frequently, but back to the reservation the same day.

TESTIMONY OF WILLIAM GARFIELD ON CROSS EXAMINATION.

That his father's Indian name was John Haytelit; that his father went to San Francisco; that his mother was born in Queets. [423]

TESTIMONY OF WILLIAM GARFIELD ON REDIRECT EXAMINATION.

That he knows what tribes were affiliated with the Quinaielt tribe in the Treaty in 1855, because he was a big boy at that time—the Quileutes, Hohs, Queets and Quinaielts.

TESTIMONY OF WILLIAM GARFIELD ON RECROSS EXAMINATION.

That he does not know how old he is as his father and mother being Indians, they did not count the age; that he goes by the Treaty and when they first opened school in Taholah—that he was the first scholar—he and his sister; that he must be over 70 because he remembers the Treaty—saw the Quileutes, Hohs and Queets come to Taholah; that he cannot say if he is about 80 years old—that the only age he knows is to go by the last Treaty; that he is the only Garfield in Taholah; that he does not know his age and does not know why the census roll says he was born in 1860; that his father and mother don't count age; that he remembers well the Treaty—the last Treaty, but not the Treaty between the Moclips and the Taholahs; that he was not at the meeting at Cosmopolis on the Chehalis River in 1855, but his father was; that he was not at Olympia in 1856 when the Treaty was signed; that he does not know how old he was when

the original Quinaielt Treaty was signed; that he was born and raised on Quinaielt.

TESTIMONY OF WILLIAM GARFIELD ON RE-REDIRECT EXAMINATION.

That he does not consider the Halbert family members of the Quinaielt tribe of Indians. [424]

TESTIMONY OF WILLIAM GARFIELD ON RE-RECROSS EXAMINATION.

That he does not remember if he attended the meeting called by Mr. Roblin in 1918; that John Clip claimed to belong to the Chinooks when he was in Westport because he wanted to get Chinook money; that John Dix belongs to the Queets tribe; that Austin Copalis belongs to the Quinaielts; that he (the witness is a Quinaielt); that Johnnie Johns belongs to the Oiaht tribe; that his (Johnnie Johns') father died right at Oiaht; that Joe Copalis used to live up the river about 10 miles but he belongs to the Quinaielt tribe; that Johnson Waukeenas belongs to the Quinaielts—his father lived about 7 miles up; that Sam Hoh's father was a Queet and his mother a Hoh Indian; that he does not know if there has been a tribal council held on the reservation since 1912 as he does not keep track of anything; that he does not know how many the Indians have taken in the tribe since 1912; that he doesn't know if they still hold councils for the purpose of adopting persons into the tribes; that Mr. Sams is always there when they have that kind of meeting, but he does not think there have been any lately except law suits.

TESTIMONY OF HARRY SHALE, RECALLED AS A WITNESS FOR THE DEFENDANT.

That his name is Harry Shale; that he is a Quinaielt Indian; that he does not consider Hoquiam is now an Indian village; that it is a number of years, not so long as 50 years, since Hoquiam was an Indian village; sometimes in the neighborhood of 30 years since it became a town settled by white people.

That since the Halbert family received its allotments [425] he has considered them members of the Quinaielt tribe; that the members of the Halbert family who have not received allotments are not related by blood so they are not considered as members of the tribe; that they have often wondered how the Halbert family, as to the father who brought suit, got in, or got their allotments on the Quinaielt reservation as none of the tribe knew anything about their relationship to the Quinaielt tribe—until the last few years they found that the Halberts got their allotments through the Alloting Agent Garber, who did not have a right to give away any property on the Quinaielt reservation without the consent of the Quinaielt tribe;

That he does not base his statement on the belief that the Quinaielt reservation belongs to the Quinaielt tribe alone—that there are four tribes mentioned in the Treaty—the Quinaielts, Queets, Hohs and Quileutes, and that no one has any right, except by blood or marriage, and if they be related by marriage they first have to be adopted through a council meeting and the majority of the tribe have to vote on such person before he is admitted as a member of the tribe; that

there were some adoptions a couple of years or so ago, but he does not know how many; that he lives at Taholah and since the road has been built he goes to Hoquiam very frequently—in fact during the fishing season, when they have business there, they go up almost daily and take in their fish from the reservation.

TESTIMONY OF ROSA GARFIELD FOR THE DEFENDANT.

That she is Rosa Garfield, a Quinaielt Indian.

Q. Do you consider Hoquiam an Indian village or settlement?

A. Yes. [426]

Q. Do you understand my question? Do you think that Hoquiam is now an Indian village or Indian city?

A. No.

Q. You don't think so?

A. No.

That she knows the old Mrs. Halbert; but does not know Rich Halbert, or Mrs. Halbert's children; that she does not think they are members of the Quinaielt tribe of Indians; that so far as she knows they belong to the Upper Chehalis.

CLEVELAND JACKSON'S TESTIMONY CALLED IN REBUTTAL FOR THE PLAINTIFFS.

That he is 35 years of age, and knows and is familiar with the Chehalis River which flows into Grays Harbor and has been so long as he can remember; that tide sets up that river to just about the mouth of the Satsop River; in high tide, some above that river.

That he has attended most all of the tribal council meetings held at Taholah; that not many people have presented themselves before this tribal council for recognition or adoption during the past ten years; that the Quinaielts have not passed on more than about a dozen, and the big council of 1912, but the Government employees have passed on a lot more.

CLEVELAND JACKSON'S TESTIMONY ON CROSS EXAMINATION.

That he was speaking of the period since about 1912 up to the present time, and that within that period of about 15 years so far as he knows not over a dozen were passed on by the Quinaielts; that he would say within two or three one way or the other, and that he has attended all [427] the tribal councils put over legally.

W. B. SAMS' TESTIMONY FOR THE PLAINTIFFS IN REBUTTAL.

W. B. Sams testified that he is superintendent of the Quinaielt reservation; that he recognizes the book shown him (noted that it cannot be offered in evidence being required for constant use at the Agency) as being the allotment roll of allotments from 1905 to date; that up to the time Mr. Roblin came there were 690 allotments made, and that now the total number of allotments made is 1414; that perhaps 50 percent of the later allotments are on the Quinaielt reservation—300 of them are Quileutes who live at La Push—leaving probably 500 others, and of that number probably 150 live on the reservation and the others live off—about two-thirds; that a great many of those who live off the reservation appeared before the tribal council

and obtained approval or recognition, in the manner described by Mr. Roblin; not all of them because some of them were duly enrolled parents that are allotted now following their original allotments; that at the last council meeting 50 or 60 outside Indians were adopted into the tribe—that was in 1925 or 1926 and those adoptions were approved by the Secretary of the Interior; that there is a record of them at the Agency, which will be produced later (having been requested by counsel); that would make in the neighborhood of 300 outside people on the census roll being considered; that before allotment began he was instructed by the Indian office to call together some of the headmen of the tribe to go over the roll with them because they had understood [428] a large number of names were on the roll that were probably not there legally, and wherever these headmen objected to the allotment of a person whose name appeared on that roll, that then the matter must be taken up and if possible, get the tribal council to act upon them, or submit the matter to the Indian office for further consideration; these headmen were William Mason, Harry Shale, Johnson, Waukeenas, Jack Mason, Harry Mason—about seven of the number; William Garfield was not there; that Jack and Harry Mason are children of William Mason; that three of these are members of the Mason family; that the two children of William Mason happened to drop in at the meeting; that every name on the roll was gone over and they objected to a great many of the names on the roll; that the instructions, if objection were made by the headmen, was to take the matter up with the tribal council for action on the names of such as were objected to, to see if they would

be recognized as members, and that if evidence of fraud in getting on the roll could be seen, action to be instituted to get them off the roll, and then submit to Washington for approval.

That though the Department did approve of a large number of names on this roll that the Indians did not approve of themselves, the reason given for that was that after the Indians had objected to these names, he called a council meeting and endeavored to get the Indians to consider the names objected to at the council meeting, but the Indians declined to do so, saying "We don't want these people; we won't vote on them" and adjourned the meeting; that then he submitted the whole matter to the Indian Office in Washington, and asked for instructions, and that [429] Department sent back a list of names, 50, 60 or 70 on the list, and told him to certify them because those particular names had been on the roll 10 or 15 years without objections and they had no real grounds to allege they had been put on with fraud, so that on instructions of the Secretary of the Interior he was obliged to certify that list.

That there were about 200 names on the last roll that the Indians had not passed upon favorably; that he (the witness) does not know how those names got on the roll, but does know that the Indians object to them being allotted; that he does not know anything about how the first roll was made up and there is nothing in the offices to show that, nor whether the Indians were consulted about that first roll; that there was a roll of about 305 Indians in use at the time the allotments began and that that

roll was never changed until the allotments were finished in 1913, and that then all the new allottees were entered on the roll because they were allotted.

Here stipulated that the court's requested information as to the distance the tide waters go up the Chehalis River, may be filed at any time during the course of any of the cases involved. [430]

TESTIMONY OF CHARLES E. ROBLIN FOR THE DEFENDANT IN SUR-REBUTTAL.

That he cannot say what proportion of the names submitted to the Department in the last schedule were Quileute Indians—he paid no attention to that, it being out of his jurisdiction.

That the reason for the enlargement of the reservation under the Executive Order of 1873, was because the Treaty provided for the setting apart of a tract or tracts of land for the use of those Indians, and in 1861 W. M. Mill, then Superintendent in charge of the Indians of the Pacific Coast, entered into a contract with the surveyor and had a tract of land containing about 10,000 acres surveyed, which took in the mouth of the Quinaielt River and the Moclips River (the Moclips River has since changed its course and the mouth is not now on the reservation, but then it was); that the reservation extended about five miles back from the Pacific Ocean beach and did not provide sufficient fishing localities, and in 1865 Superintendent Mill recommended to the Indian Department the creation of a larger reservation, defining that proposed enlargement much as the reservation now exists, and stating that the

Quileute and Queets Indians, north of the Quinaielt River, did not reside on the reservation and would not come upon it as at that time constituted; that an enlargement would afford two more fisheries on the Pacific Coast and several more around Quinaielt Lake, the enlargement to take in the mouths of the Queets, Raft and several other smaller rivers emptying into the Pacific Ocean between Queets and Quinaielt Rivers, and east as far inland as Quinaielt Lake; [431]

That no mention was made in this recommendation of desiring the enlargement of the Quinaielt reservation for the purpose of supplying lands to the Indians except in the manner above outlined; that the enlargement comprised rough land and presented no inducements to white settlers, but the main purpose of the enlargement was to supply fishing reservations at the Queets and Raft Rivers, and on the lake; that letter to the Commissioner was written in 1873.

Plaintiff's Exhibit No. 9, being photostatic copy of the Solicitor General's opinion, admitted in evidence.

Upon that letter of recommendation for enlargement and setting aside of the reservation written by the Commissioner of Indian Affairs in 1873, the Executive Order of November 4th, 1873, was issued, and practically repeated the recommendations of Superintendent Mill (Miller).

That the letter of Superintendent did not have reference to making allotments; he recommended that the Indians be gathered together, but no mention was made of allotments. [432]

It is here stipulated for the purpose of taking care of the selection matter, in Cause No. 300-E—(Rich Halbert), that Paragraph 6 be amended as follows, in place of the Tract as supplied in the complaint:

East half of N E quarter Sec 9 TP 23, N. of R. 11 W. W. M. by reason of the fact that the plaintiff has made this last named selection in place of the tract supplied in the complaint.

On request of counsel for the plaintiff, objected to by the Government, the Court allows the plaintiff to withhold the argument in the Halbert cases, Nos. 299-E; 300-E; 301-E and 302-E, until the completion of all the testimony, having been consolidated for trial, but to be argued separately. [433]

In re: LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, JUANITA CHRISTORFSON, ROBERT ROLFSON, DONALD SMITH and VIVIAN FORDEN, Minors, by LIZZIE ROLFSON, as Guardian ad Litem; cause No. 314-E.

Mr. SPAULDING.—It is agreed too that the testimony of Mason and of Garfield and of Mrs. Garfield will be the same in this case as to the tribal relationship of this pliantiff as it was in the Halbert cases.

Mr. ROWLAND.—We will agree to that.

The COURT.—There is nothing stipulated now.

Mr. SPAULDING.—The only reason we are doing that is so these Indians living below Hoquiam can get started for home before dork.

Mr. ROWLAND.—We will agree their testi-

mony with reference to Lizzie Rolfson will be the same as testified to concerning the Halbert children. We will agree to that.

Mr. ELLIOTT.—We won't stipulate this woman is a upper Chehalis.

Mr. ROWLAND—In regard to the status of Hoquiam and tribal affiliation—

Mr. SPAULDING: (Interrupting)—The principal thing we are interested in is that she is not recognized as a member of the Quinaielt tribe of Indians.

Mr. ROWLAND.—In other words, in their judgment, she is not recognized as a member of the Quinaielt tribe of Indians. We will stipulate they will testify that.

The COURT.—Mason, Garfield and Mrs. Garfield?

Mr. SPAULDING.—Yes, Your Honor.

The COURT.—Proceed. [434]

TESTIMONY OF LIZZIE ROLFSON FOR THE PLAINTIFF.

LIZZIE ROLFSON testified that she lives at Hoquiam, and has always lived there since her birth at Hoquiam; that she is supposed to be an Indian and supposed to belong to the Lower Chehalis tribe; that she is a half-blood; that her mother was a full-blood Indian of the Lower Chehalis tribe; that she was married three times, the first time to William Smith, a white man, in February, 1887, in Montesano, and that she has two living children by Mr. Smith, Alvin and Eugene—they are plaintiffs in this case; that Alvin was born in Hoquiam and

lived there until he was grown, then going to Montana for his wife's health, and finally to California for his son's health; That Alvin is one of the plaintiffs in this case; that Eugene was born in Hoquiam and lived there until he went to war; that now he is working in the post office in San Francisco, and has been in San Francisco since he got out of the army, except for one year at his home in Hoquiam.

That her second husband was Lewis Sievertson, who is dead; that he was a white man and she married him in 1903; that she has one daughter living, by him—Juanita Christorfson, who was born and is still living in Hoquiam; that Juanita's daughter, Vivian Forden, was also born in Hoquiam; that Juanita is a quarter-blood Indian and is married to a white man—that Vivian Forden, her child, is eighth-blood.

That her (Lizzie Rolfson's) third husband, was a white man, Charles Rolfson, whom she married in 1907; that she has one child, Robert Rolfson, by this man, and he is a plaintiff in this case; that he was born at [435] Newport, Oregon; that she (Lizzie Rolfson) lived in Hoquiam 11 years but has always maintained a home there her entire lifetime; that she was 6 years old when her mother died and her father died when she was 9; that then she made her home with Lanie Ford Halbert, the mother of the Halbert boys, and was raised by her.

That Donald Smith is her grandson, about 9 years old; that his mother died and she raised him in Hoquiam from the time he was about 1 until he was 7, when he was taken to California.

That her son Charles Rolfson was born in Newport, Oregon, they having gone down there to improve some land her husband, Charles Rolfson, owned there, to get it ready to sell. She intended to return to Hoquiam, and did so return, and has lived there the past eleven years.

TESTIMONY OF LIZZIE ROLFSON ON CROSS EXAMINATION.

Lizzie Rolfson testified on cross examination, for the purpose of placing the exact places of birth of some of the plaintiffs herein; that Donald Smith, her grandson, was born October 2, 1917, at Billings, Montana; that Alvin Smith, her son, was born at Hoaquiam, April 30th, 1888; that Robert Rolfson, her son, was born at Newport, Oregon, February 24th, 1909; that Juanita was born at Hoquiam, February 17th, 1904, and Eugene Smith was born May 24th, 1898, at Seattle, all being plaintiffs herein.

That she belongs to the Lower Chehalis tribe; that she associated with them up to the time she went to work; that she is now 57 years old; that she [436] associated with the Halberts all her life; that she just grew up with the town and the Indians have all left; that she has visited, since she was 13, at Quinaielt, with Mrs. Alexander who lives, and has visited among them, sometimes for a week at a time; that the Chehalis never had any tribal meetings that she remembers; that as a girl when living on the Bend she attended some of the Indian meetings; that her mother's name was Myotta, Mattie in English; that her mother had one brother and that he belonged to the Chehalis right there

where she lived; that she had a cousin, Jack Oya, but does not know what tribe he belongs to as he left Hoquiam, and she has not kept track of him;

That she put her name in for enrollment on the Quinaielt with Garber; that she was not taken in, having put it down that she was in the Chehalis tribe and they would not let her in; that she made application for the other members of her family (the plaintiffs herein) but they were rejected—would not let them in because they were Chehalis; that her mother was born in Hoquiam.

TESTIMONY OF LIZZIE ROLFSON ON RE-REDIRECT EXAMINATION

That she went down to be enrolled, or to put in application for claims, and Mr. Sams read to her from the roll that she belonged to the Chehalis tribe and could not get in.

TESTIMONY OF LIZZIE ROLFSON ON RECROSS EXAMINATION.

That she does not remember just when that was that she made application, but in 1918; that she first went to Mr. Sams and then to Mr. Roblin; that it was Mr. Garber [437] she went to at Taholah and that after the allotment advertisement in the paper she went to Mr. Sams and he told her she could not get in, but she could not say exactly how many years ago.

TESTIMONY OF PHOEBE ALEXANDER FOR THE PLAINTIFF—314-E.

That she is an Indian, allotted on the Quinaielt reservation at Taholah; that she knows Lizzie Rolf-

son, and that Lizzie Rolfson is a half-breed Indian; that Lizzie Rolfson lives in Hoquiam, and has lived there ever since she (the witness) has known her; that she is 43 years old and has known Lizzie Rolfson all her life; that she (the witness) was born in Hoquiam, and lived on the Quinaielt reservation for about 7 years from 1913; that she had a fishing location there; that she left the Quinaielt reservation because she understood they were not going to lease them any more lower ground; that her fishing location was right near the mouth of the Quinaielt River; that Dr. Hill, the agent down there, told her that no more lower grounds would be leased and that she then gave up her location and went back to Hoquiam;

That she has known Alvin and Eugene Smith ever since they were babies; also, she has known Juanita Rolfson Christorfson since she was a baby, and they were all born in Hoquiam; that she has known Robert Rolfson, Lizzie Rolfson's youngest son, ever since he was a baby; that he has lived in Hoquiam practically all his life;

That her (the witness') Mother, was a half-breed Quinaielt Indian and the first time she saw Lizzie Rolfson was in her own mother's home; that she regards the Rolfsons [438] as Indians; that she sees many Indians in Hoquiam whenever she goes downtown; that the Indian agency is located there; that she knows all the Indians, and talks with them, that live on the Quinaielt reservation; that she sees many of the Indians living at Taholah in Hoquiam when they come in to trade their fish.

TESTIMONY OF PHOEBE ALEXANDER ON CROSS EXAMINATION.

That her name before she was married was Phoebe Halbert.

TESTIMONY OF PHOEBE ALEXANDER ON REDIRECT EXAMINATION.

That her name is Phoebe Halbert Alexander, and that she is a sister of the Halbert boy's father (plaintiffs in cases herein).[439]

TESTIMONY OF W. B. SAMS FOR DEFENDANT—314-E.

W. B. SAMS testified that he knows of Jack Oya, and knows John Oya, the son of Jack Oya, very well; that Jack Oya is allotted on the Chehalis reservation, more in the nature of a homestead, but that the son John is not allotted;

That Lizzie Rolfson never appeared before him and the Quinaielt tribe of Indians to ask for adoption, and so far as he knows, her children have not either.

> At this point, on agreement of counsel for parties hereto, it is agreed that all cases being consolidated, the swearing of a witness in one case is considered as taking the oath in all cases.

TESTIMONY OF CHARLES E. ROBLIN FOR DEFENDANT.

CHARLES E. ROBLIN testified that he is at the present time qualified, being the Alloting Agent on the Quinaielt reservation; that he knows Lizzie Rolfson; that in 1916 to 1919 he was working in

Western Washington as Special Indian Agent, not Special Allotting Agent, and at that time Mrs. Lizzie Rolfson appeared before him and applied for enrollment, indefinitely, but what she wanted was an allotment for herself and her children on the Quinaielt reservation,-making an affidavit before him of her family history, residence, marriages, children, dates of birth and places of birth, signing the affidavit as prepared by him for her; that when she testified that she appeared before Mr. Garber he believes she might be mistaken, thinking it was him, but that she appeared before him (Mr. Roblin). [440]

That her name was presented before the Quinaielt tribe for adoption and the tribe refused to adopt her, and the Secretary of the Interior, upon his recommendation, denied her adoption; that he does not believe the name of Robert Rolfson was included in that, as he was then born; that this affidavit and application is on record in the form of a certified copy of the originals from the Indian office; that the council meeting at which the application was presented extended through three days, December 18th, 19th and 20th, but the exact date this application was considered is not fixed;

That if one has the other requirements, then Lower Chehalis Indians are entitled to allotment, but the contention of the Department is that the "other requirements" are that they be recognized members of the Chehalis tribe of Indians and if they are, then they are not barred from allotment; that the document handed him is a photostatic certified copy

of an affidavit prepared by him for and signed by Lizzie Rolfson on November 21st, 1918.

Defendant's Exhibit A-2, photostatic copy of affidavit last above mentioned, admitted in evidence.

It is here STIPULATED by and between the respective parties that the testimony of all the Indians offered by the Government, as to the number of Indians, the Indian population of Hoquiam will be the same as given in the Halbert cases. [441]

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION.

CHARLES E. ROBLIN testified further that he prepared the affidavit (Defendant's Exhibit A-2) from information given him by her; that she read the affidavit after written by him and before signing it; that he is not certain that he specifically informed Mrs. Rolfson at that time that since she was an Indian of half-blood, of the Chehalis tribe, it would be necessary for her to be adopted by the Quinaielt Indians, but that was the object she had in coming to see him;

Q. That was the natural information you would have given her? You would have suggested to her she would have to be adopted in the Quinaielt tribe?

A. Yes.

That at that time it was, and now is the theory of the Government, that any person belonging to the Chehalis tribe must be adopted by the Quinaielt tribe in order to be allotted; that his instructions were at that time to assist those desiring that end; that Lizzie

Rolfson's affidavit is dated on the 21st of November, 1918, and the tribal council was held, as called by him, for the purpose of presenting applications, on December 18th, 19th and 20th, 1918; that defendant's Exhibit No. 2 is a report of the proceedings of that council—that is, a small portion of it, the whole proceedings containing several pages; that those who signed that particular part of the report were simply recognized Indians of the Quinaielt reservation; not headmen; that she did not appear before the people named in the report; that the council was held for three major purposes; (first) to obtain information from the older Indians of the reservation as to what tribes [442] were associated with the Quinaielts and Quileutes in the Treaty; (second) to obtain further information for the Department as to applications which had been presented before a preceding council held in April, 1912; (third) to present to the council, applications for enrollment from new applicants; and any other business that might be required. At the request of the Court a certified copy of that part of the minutes of that meeting was prepared which dealt only with the first object for which it was called; that is, to obtain from older members of the tribes, information as to who were associated with the Quinaielts and Quilleutes in the Treaty; the balance of the report was not copied, and he hasn't it before him; that the Indians named in that portion of the report on exhibit are the 64 adult members of the Indians of the Quinaeilt reservation called in to obtain that particular information, and those who signed that report did so to signify that it was a correct report of the meeting; there was no particular

significance attached to the particular names signed to the report—the other 54 were not present when the six signed the report.

That with regard to the Lower Chehalis Indians, there are a large number of bands of the Lower Chehalis who have not, so far as known, kept up any tribal organization or tribal meetings for considerable time; that he does not know how Lizzie Rolfson could particularly show that she was a recognized member of the Lower Chehalis if they have no organization—that the majority of those bands have been incorporated in the Indians of the Quinaielt reservation, distinguishing herein between members of the Quinaeilt reservation and members of the Quinaielt [443] tribe; that the Department was held variously and somewhat loosely, possibly, that recognition by a tribe or remnant of a tribe, can be shown by other matters than that of formal recognition or indorsement in a meeting; by continued living with the tribe, conspicuous service rendered by the tribe, marriage to a member of the tribe; an object to living with the tribe of being made a participant in money or distribution of tribal property, or other extraneous matters of that sort, can be produced to show a continued recognition by the tribe.

THE COURT: How could she be more thoroughly identified with the Lower Chehalis than her association with the Halberts? Of course, she has married three white men.

MR. SPAULDING: They are Upper Chehalis, if the Court please.

MR. ROWLAND: We don't concede that.

THE WITNESS: I don't know.

THE COURT: Can you name a Lower Chehalis that lives around Hoquiam?

THE WITNESS: I would class, I believe, the Chenois families, of Chenois Creek, with the Gray's Harbor or Lower Chehalis Indians. They have been quite closely identified with the Quinaielt Indians or the Indians of the Quinaielt reservation, but they don't live right at Hoquiam; I don't know of any of those Indians who live in Hoquiam.

Q. In that connection, Allen Chenois—did you mention the Chenois family?

A. Yes.

Q. (Continuing)—is a member of that family—Allen [444] Chenois?

A. Yes.

Q. He was on the stand yesterday?

A. Yes.

TESTIMONY OF CHARLES E. ROBLIN ON REDIRECT EXAMINATION.

CHARLES E. ROBLIN further testified that it has often occurred and is the theory of the Government that when a tribe becomes so scattered that there is no *change* for them to keep up a tribal organization, that such members of such a tribe who once had existing membership would not lose their rights to tribal property by reason of that scattering, but that their issue, the second, third and fourth generations, would be in such a position that they could not be recognized as members of the tribe, the difficulty of proof being the principal thing, and the inferred bar of the legislation from the Act of February, 1887, and June 7th, 1897, which insures to

the members of those tribes who were once recognized as such members, the continuance of their rights, but says nothing about the inheriting of such rights by the children; that there must be some place at which a tribe or tribal organization will cease and the legislation has attempted to make it definite, but after the tribe is so scattered that no organization can be kept up, people who once belonged to that tribe would not lose their rights, but that the children or issue would not have an inheritance right.

That he does not know of any existing organization of a Lower Chehalis tribe of Indians; that there were several bands around Gray's Harbor country and the lower [445] part of the Chehalis watershed, but he doubts if there ever was any central organization. He don't know any reason why they should keep up one if there was such a one.

TESTIMONY OF CHARLES E. ROBLIN ON RECROSS EXAMINATION.

That as near as he can get from quite close study of the Indians of this district, the Humptulips and the Indians at the mouth of Grays Harbor were really part of the Quinaielt tribe and that those along the Satsop River and around Montesano and along the lower branches of the Chehalis River were more properly called the Lower Chehalis and were more closely associated with the Upper Chehalis than the Humptulips; that he believes the Humptulips were really a small band of Quinaielt Indians; that it is his belief that the Indians whose ancient habitat was on the Hoh River were associated with the so-called Upper Chehalis.

In re: LULA M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, EMMA S. ELLIOTT, MARION E. ELLIOTT and NORMA C. ELLIOTT by J. H. ELLIOTT, guardian ad litem.

Docket No. 312-E.

In re: EDNA MAY ELLIOTT, RUTH G. ELLIOT, WILLIAM H. ELLIOTT, JOHN G. ELLIOTT, FRANK L. ELLIOTT and JEWELL M. ELLIOTT, by WILLIAM A. ELLIOTT, guardian ad litem.
Docket No. 324-E.

In re: CHARLES G. ELLIOTT, Jr., ANNA MARIE ELLIOTT; HENRY ELLIOTT, RALPH G. ELLIOTT and FRANCES ELLIOTT, minors, by CHARLES G. ELLIOTT, guardian ad litem.

Docket No. 325-E.

In re: AGNES RUBENS, LOUISE HENRY PETERSON, MARY HENRY HAGEN, CHRIS HENRY, Jr., CHRISTINE HENRY, JUNE HENRY, by Louise E. Henry, guardian ad litem.

Docket No. 326-E.

On argument and order of court Paragraph 2 of the Answer to the Bill of Complaint in cause No. 324-E, may be amended to read "denies each and every allegation" instead of as filed "admits."

Over the objection of the defendant, copy of the record in a former case (272-E, Agnes Elliott, et al.,

vs. U. S.) (Complaint, Answer and Decree) is introduced in cause No. 325-E.

Plaintiff's Exhibit No. 10 (Case No. 325-E) being certified copy of record first above cited, admitted in evidence.)

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT FOR PLAINTIFFS 312-E.

JOSEPHINE JOHNSON ELLIOTT, being sworn, testified that she is the Mrs. Elliott allotted by decree of this [447] court in the case just read, which was allotted by agreement; that she is the wife of Joe Elliott, who was also allotted; that it is admitted that the plaintiffs in this case are her children—Lula M., Sophie M., Carlyn M., Marion E., Emma S. and Norma C.; that they are still all alive and live at Astoria, Oregon. At the time of her allotment she lived in Dahlia on the Washington side of the Columbia river; that her children were born in Dahlia and lived there as long as she did, but she does not remember how long that was; that from Dahlia they moved to Astoria and that the children now live in Astoria, Oregon; that her husband's business is fishing and he is still engaged in that; that she is an Indian and these plaintiffs are all her own children; that Dahlia is, in her estimation, an Indian settlement, the majority of the people living there are of Indian blood; that she has known Dahlia nearly all the time since her birth; that she has never seen any monuments or a graveyard there, but has heard there is an old one there; that she and her husband are both allotted on the Quinaielt Indian

reservation; that she is 47 years old; that there are fishing stations all along the river around Dahlia; that Indians come from all over the coast of Washington to fish above Dahlia during the summertime; that there are only five white men in Dahlia, and they are married to Indians; virtually the whole population are Indian; that her family lives right in the middle of Dahlia—the place is known as Elliott's Point; that most of them living at Elliott's Point are quarter-Indians; that the nearest town or station down the Columbia River south of Dahlia is a fishing station called Altnoona—that Chinook is right [448] across the river from Astoria—she does not know how far from Dahlia; that it has been a fishing station as long as she can remember; that McGowan is right above Chinook and they employ Indians for fishing, and have for many years; that the Indians who work at McGowan come from Taholah and Bay Center and have been ever since she can remember; that above Dahlia there are fishing locations all along the river—Fitzpatricks' grounds and Farrow grounds; that George Charley comes there to fish;

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT ON CROSS EXAMINATION.

That she was married in 1905 at Astoria, Oregon; that her children, except the youngest, were born in Dahlia; the youngest was born in Astoria, Oregon; that they left Dahlia eight years ago, having lived there from 1905, and except for four months that they lived at Taholah, they have lived at Astoria, Oregon, since.

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT ON REDIRECT EXAMINATION.

That Taholah, where she lived for a while, is on the Quinaielt reservation and her children attended school there;

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT ON RECROSS EXAMINATION.

That they were at Taholah four months, but her oldest girl was there longer, but she did not attend school be- [449]cause she was a high school student at Moclips; that she is not sure, but thinks it was 1925 when they lived at Taholah and just went there to visit at other times—that is, she lived at Taholah four months and visited there at other times, and that her mother and sister live at Taholah.

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT ON RE-REDIRECT EXAMINATION.

That her mother lived at Taholah until she died in June, but her residence is still there, and her sisters are living there; that she was married in Astoria, went there to get married, and went back to Dahlia within two or three days, and then remained in Dahlia about 13 years; that they visit back and forth across the river at Astoria, from Dahlia; that all her relatives mostly live around Dahlia.

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT RE-RE-REDIRECT EXAMINATION.

That when she was allotted she was living at Dahlia, but does not know how long ago that was; her

sister put her name on the roll; that when the Court entered its decree regarding allotment, she was living at Astoria, and that is where all her children are living now except one—he is in Vancouver, Washington, on the Columbia River. [450]

TESTIMONY OF JOSEPHINE JOHNSON ELLIOTT ON RE-RE-RECROSS EXAMINATION.

That it is Lula, the oldest, who is living in Vancouver, and the rest live with her at Astoria, and always have.

TESTIMONY OF J. H. ELLIOTT FOR THE PLAINTIFF.

J. H. ELLIOTT testified that he is the plaintiff in cause No. 312-E, and the husband of Josephine Johnson Elliott, and the father of Lula, Sophie, Carolyn, Marion, Emma and Norma Elliott, and Mrs. Elliott, who just testified, is their mother; that he lives at Astoria, Oregon; that his business is fishing on the Columbia River, on both sides of the river; that he was born at Dahlia, Washington, and lived there about 34 years; that they are mostly all Indians who live at Dahlia, probably not over four or five white people; that the children of all the people go to the school at Dahlia, but only two are white children, and the rest, about 20, are Indians; that his occupation has always been that of fishing; that he has lived at Astoria about eight years and fishes out of Astoria now; that he goes around Dahlia regularly—back and forth every week or once a month; that he fishes off the river there; that it is a fishing

point and always has been, and that the Indians fish there; that there are lots of fishing locations south of Dahlia toward the mouth of the river, all the way around Dahlia, and a place down by the mouth of the river is fished by the Indians; that the Quinaielts and Chinooks fish there, but he does not know of any other tribes; that there are lots of fishing locations up the river from Dahlia, toward Longview; they fish all along the [451] river from Dahlia up to Kalama Falls; that it is the same Indians (speaking of the Indians of Southwestern Washington particularly) that fish clear up as far as across from Catalina Island and also below Dahlia to the mouth of the river;

That he is a Quinaielt Indian allotted on the Quinaielt reservation; that he was allotted in 1926, June or March; that the living conditions of his family are no different at all than when they were allotted; that they have always lived as they do now.

TESTIMONY OF J. H. ELLIOTT ON CROSS EXAMINATION.

That his daughter, Lula Elliott, is teaching school in Vancouver, Washington—in the school for white people; that the Indians spoken of, the 18 Indian children attending school at Dahlia, are of the same degree of blood as his children, and that he considers any person with any Indian blood as an Indian; that he has associated with the Quinaielt tribe of Indians in fishing, and in visiting at Taholah; that in 1905 he visited there four months with his wife's mother; that he has not been there since then; that his youngest child, five years old, Norma C. Elliott, has been on

the Taholah reservation in 1925; that it was in 1925 when he was there four months (not 1905), and he visited there the year before that for two days, with his children and family; that he has not associated with any other tribes of Indians than the Quinaielts; that he never received any money from the Chinook tribe; that Dahlia is not on an Indian reservation; that he pays taxes on the land there to the State; that there is a graveyard there at Dahlia; that it is at Astoria he pays taxes to the [452] State; that he has no property at Dahlia; that when he lived at Dahlia he lived with his mother; that he takes his family to Dahlia, but his home is in Astoria; that he has not lived at Dahlia for eight years; that his only association with the Quinaielt Indians has been occasional visits to the reservation.

TESTIMONY OF J. H. ELLIOTT ON RE-DIRECT EXAMINATION.

That there is an old graveyard at Dahlia.

That he is with the Indians most all of the time.

TESTIMONY OF J. H. ELLIOTT ON RE-CROSS EXAMINATION.

That in 1925 he took his first steps to get an allotment on the Quinaielt reservation, about the same time he made the visit of four months there with his family. [453]

TESTIMONY OF LOUISE E. HENRY FOR PLAINTIFF—NO. 326-E.

That she is LOUISE E. HENRY, the mother of Agnes Rubens, Louise Henry Peterson, Mary Henry, Christine Henry and June Henry, plaintiffs in cause

No. 326-E; that the father of these children is a white man to whom she was married in 1890; that she now lives at Dahlia, where she has lived all her life; that her children were born at Dahlia, and all live in Dahlia, excepting one who lives in Hoquiam.

TESTIMONY OF LOUISE E. HENRY ON CROSS EXAMINATION.

That she was married in 1890; that her children have always been associated with only the Quinaielt tribe of Indians, at Taholah, and the Indians at Dahlia where they now live; that her children were on the Quinaielt reservation in 1925 when they stayed a week, but were there at various other times. In 1925 when they were there, was when she started to take steps for allotments for these children, as she had been notified by the head men that they were holding a council meeting and for all Indians to come; that it was Chief Mason who notified her, and they went for the purpose of attending the council meeting; that she don't think she went for the purpose of being adopted on the Quinaielt reservation; that she talked to Mr. Sams in 1925. [454]

On stipulation and finding of the Court, the Bill of complaint in Cause Nos. 300-E and 312-E, are amended as to the selections of land made by the respective plaintiffs, for allotment.

On stipulation of all parties concerned herein, the testimony given in Cause Nos. 312-E, 324-E, 325-E and 326-E, concerning the villages of Dahlia and other villages along the Lower Columbia River being Indian settlements may, and is to apply to the case of Rose Pickernoll and

others, in Cause No. 307-E—the testimony in the first four relating to the villages, to be considered as in 307-E.

Plaintiff's Exhibit No. 10½ being extracts prepared by the Plaintiffs herein from the "Handbook of American Indians," for convenience and reference, is admitted in evidence.

On stipulation the testimony of H. H. JOHNSON (witness next to be called) for the plaintiff and of Charles E. Roblin (hereinbefore called) is to be considered on all cases on trial herein as to allotments and selections and enrollment (in the absence of objection).

TESTIMONY OF H. H. JOHNSON FOR THE PLAINTIFF.

H. H. JOHNSON, being sworn, testified that he lives in Tacoma, Washington, where he is a publisher and has lived in the State of Washington for 20 years; that he was in the Indian service for the United States Government for 17 years; first at Shawnee, Oklahoma; after that 3 years on the Omaha reservation in Nebraska; then at the Fort Lewis Indian School in Southwestern Colorado; then in Oklahoma; then in charge of the Hickory Apache Agency, New Mexico, and in May, 1908, transferred to Washington, with headquarters in Tacoma, having charge of all Indian reservations in Southwestern Washington, supplying allotments of land; that he was often present on the Indian reservations where allotments were taking place; that he is familiar with [455] the method of making allotments according to the Department's regulations pertaining thereto on

the different reservations where he has worked, including the Quinaielt reservation; that the duties of the agent in Charge at Quinaielt are the same as at any Agency—to make a census of the tribe as accurately as possible on June 30th of each year, the object being to keep track of the families.

That in the case of an Indian, who is enrolled and allotted, but who is married to a white woman, and living off the reservation, say at Hoquiam or Bay Center, and a child born to that couple off the reservation, and where the child was enrolled and made application, and made a selection, and made an application for allotment through the Allotting Agent, the practice would be to certify the child, or each member of the family; we would enroll him with the father; that while he (Mr. Johnson) was acting as Agent at the Quinaielt reservation he ascertained to what tribes or bands of Indians the enrolled and allotted Indians of the Quinaielt reservation belonged; that the allotted Indians belonged to numerous bands—Wynooches, Satsops, Whiskahs, Shoalwater Bay Indians are all he could think of then, but numerous bands; that he can name some of the tribes and bands of fish-eating Indians between the Makah Reservation on the north and the Columbia on the South, being those he has just before mentioned, and remnants of the tribe down on the Columbia; that he remembers the Chinooks—that they are a vanishing tribe, the general term being "fish-eating Indians," and were considered to belong to what is generally known as the Chehalis group, also fish-eating Indians; that he is and was acquainted with the tribes of bands around Shoalwater Bay;

that they [456] were enrolled with the Quinaielts and were classed as Quinaielts by him while he was there; that those bands or tribes around Grays Harbor, like the Chinooks at the north end, and other small bands thereabouts belong to the Quinaielts in a general way; that the Quinaielt was the largest single tribe, but they were all considered to be Grays Harbor Indians.

That when he took charge of the allotting work at the Quinaielt Agency it had been under way about a year; that some of the Indians living on the reservation then had already been allotted; that when he took charge there were something over 100 trust patents there for distribution that had been sent to the man in charge of the Agency before he took charge—allotments without adoption in the Quinaielt tribe.

He further testified that he received a letter from Commissioner Luke of the Indian Department about a month before he took charge of the Quinaielt Agency. It was more or less personal—he put it in the Agent's file and hasn't seen it since; that this letter stated "when you arrive at your new station and become familiar with the situation, I wish you to call a council at Taholah and also a council at Bay Center and explain to the Indians why they should take these trust patents that had already been forwarded to the agency for distribution." They had supposedly refused to accept the patents; that is what the letter stated; that in 1906 he met with the Indians at Bay Center and Shoalwater Bay, and apparently the objection to taking the trust patents seemed to be largely from the impression that they

had, that they would be obliged to live on the reservation; he told them that would [457] have nothing to do with it; that if they were entitled to the land they were entitled to it, and did not have to live there, and then they accepted the trust patents;

That the names of William Mason, William Garfield, Anna Copalis and George Charley were on the census roll of the Quinaielt Indians; most of them were on the roll when he took charge; the people around Grays Harbor and Bay Center were also on the Quinaielt roll; that while he was in charge at the Quinaielt Agency, the Indians around Shoalwater Bay were largely oyster men—the oyster beds being located on that harbor and Bay Center. It would be pretty hard to state—the Indians of southwestern Washington went there to pick oysters, migrated from there to the other fishing grounds, according to the seasons, the season at Quinaielt for salmon being April. They went there—not every Indian went because some had employment more remunerative than fishing.

That the Indians of southwestern Washington followed the fishing grounds during the fishing seasons—at Taholah in April, and the Indians would gather there; later in the season to the oyster beds at Shoalwater Bay; "And then go to the mouth of the Columbia River or up and down there. Many times he has had telephone calls from Indians there who got out of money and wanted me to send them money to get home on." That of the Indians allotted and enrolled on the Quinaielt reservation while he was there, very few were pure-blood Quinaielt Indians; that they were just generally mixed with the blood of the

southwestern Washington tribes; that not even the Chiefs were pure blood, being mixed with outside blood; that considerable were intermarried with Chehalis tribes. The Chinook is a [458] vanishing tribe, some of the older people claimed to have Chinook blood, including the Chehalis; that a great many of the children of the Chehalis Indians were allotted on the Quinaielt reservation without adoption; that he recalls one family particularly from the upper Chehalis region in the vicinity of Oakville, above the Satsop, all along the Chehalis River, the Petits—that John Smith had one allotment there; that the Hecks—he should imagine their children—that the Hayden family came from the vicinity of Oakville.

That a former agent, Major Edmund Eels (deceased) had told him that the Chehalis Indians had never had a reservation set aside, so he had gathered together all the adults and took them to Olympia and had them allotted Indian homesteads under the Act permitting homesteads on the public domain; they simply filed, as an Indian homesteader, their selections being made for them; the selected homesteads were filed in one bunch on a tract of land between Oakville and Gate; that such selections were inconsistent with claiming allotments on the reservation for those who might be entitled thereto; that he does not know how many acres these Indian homesteads embodied; that also approximately half a section of land was withdrawn from the entry for school use, but it was not a reservation—approximately 320 acres; that that would allot four Indians under the regulation of 80 acres apiece; that of that piece of school land just above referred to, a portion was allotted to Ada McKay by

Special Executive Order of President Roosevelt in 1908, Ada McKay being a half-blood Skokomish Indian girl, living off the Skokomish Reservation, who had not been allotted; that under his [459] administration no other part of that land was allotted; that when he took charge 20 years ago there was no school there, except a district day school.

That the Chehalis Indians were not parties to the Treaty of Medicine Creek (The Treaty of Puyallup);

That he had never received any instructions to proceed differently with reference to Indians that had been allotted by the decree of the Federal Court than those that had been enrolled and allotted in the ordinary way; that the children of an Indian father and an Indian mother, both allotted on the Quinaielt reservation, would be entitled to be enrolled; that the child of an Indian regularly enrolled and allotted on the Quinaielt reservation but married to a white woman, would be enrolled by him; that is, at the request of a father, a duly enrolled Quinaielt Indian, married to a white woman who had never lived on the reservation—neither of them—that in making up the census roll he would include the names of such a couple at the request of the father; that residence on the reservation would not be a requisite.

On agreement the following question and answer is to be considered as in connection with the case of Kate Walkowsky, 315-E.

That in the case of a full-blood Chinook Indian on her father's side and of the Wynooche band of the Chehalis tribe on her mother's side, married to a

white man in 1893. In 1910 this woman and eight children of the couple were adopted by the Indians of the Quinaielt reservation and the adoption approved by the Secretary of the Interior and later all allotted; that after such adoption and enrollment [460] and allotment three more children were born to this same couple, he would consider it the only thing he could do to enroll the three children born later, and allot them.

That, should this same woman later marry again—a Mr. Weiss, and one child born to them—that is Mrs. Walkowsky and her second husband, Mr. Weiss, her status would not change by the mere fact that there was a different father, since her recognition had been through her Indian blood.

That it is his recollection that the little band of Wynooche Indians was allotted on the Quinaielt reservation.

That while he was Superintendent the census rolls of allotted and enrolled Indians was taken by the Department as proof of what Indian tribe they were members of or allied with; that those rolls were all they had in evidence of an Indian's affiliation and tribal relation.

That he was Agent of the Quinaielt reservation from 1908 to October, 1913, and F. R. Archer was Allotting Agent then; that Charles E. Roblin was not there then; that of the tribes around Lower Chehalis, Chinooks, Bay Centers, around Elma and Oakville, the only band he heard of having any semblance of tribal organization was the Cowlitz Indians on the Cowlitz Prairie near Kelso; that while he was from 1908 to 1913 there was reputed to be a remnant

of the Chinook tribe or band on the Lower Columbia River; that so far as he knows they had no tribal organization; that he was then at that time very familiar with the Executive Order of 1873 and remembers it now in a general way.

That when he took charge in 1908, Mr. Luke, Commissioner of Indian Affairs, spent several days and they went to [461] Quinaielt to go over the Quinaielt reservation; that the same fall he was in Washington and with Mr. Luke had a conference with Mr. Garfield, Secretary of the Interior, and reported his findings; that the Indians had become scattered all over southwestern Washington because they could not make a living on the reservation. They went to the mill camps, lumber camps, anywhere they could secure employment, and that Secretary Garfield stated that that was simply following out the policy the Indian Department pursued in trying to get the Indians to embrace industry, and the ways of the white men and that he felt we should be very liberal in the construction of the allotment of the Indians on the Quinaielt, stating "that reservation was enlarged to provide a home for all these Indians that through their own efforts became scattered in endeavors to make their living." That as he remembered, the Executive Order, that was the object of enlarging the reservation, and that it was proposterous to think that that reservation was enlarged for the purpose of the little bunch of Indians living on it. He stated further that within two years, it was then 1908, there would be a census taking and it was his desire that this census be taken as fast as possible, and to get a full enrollment of all Indian of southwestern Wash-

ington; that this conference, in his estimation, was with regard to the fish-eating Indians of the Pacific Coast.

That he was with the Indian Service when the Act of March 4, 1911, was passed and believes that it simply bore out the instructions he received from the Secretary in that conference—embodied Secretary Garfield's ideas; that he does not believe any difference was noted between [462] the Indians living on and off the reservation.

That he is familiar with the conditions on the Quinaielt reservation, which are absolutely different than on any other reservation that he knows of. The reason is that the Indians on the plains can cultivate a little land and do lease their land to white men and in that way eke out a living, and can therefore stay on the reservations; but in the Northwest the Indians cannot clear the land and cannot make a living on the reservation, and consequently scattered into the white settlements to make a living; he never could see how their scattering mitigated their rights on the reservation; that all Acts of Congress, he believes, were made to raise the Indians to a higher standard of living. Of course, the allotment of land in severalty was a great outstanding act.

TESTIMONY OF H. H. JOHNSON ON CROSS EXAMINATION.

On cross examination, he testified that what he meant when he stated it was the policy, as he understood it, to bring the Indians back on the reservation, was that it was to recognize their rights to the lands; that it was never intended that residence on the reser-

vation was a requisite, but a place where they could secure a way of making a living then or in the future; that he does not consider it possible for the Indians to make a living on the Quinaielt reservation as it is now; that he didn't think they would make a living on this reservation; that it is timbered; that some day it would make them a living;

That during his five years with the Agency the allotment work was going on; that he did not mean that the Quinaielt reservation was created to provide a place where [463] the Indians of Southwest Washington could come in the future and make a living, but meant to provide a place where they could secure lands; that it has been the policy of the Government to provide every Indian with a piece of land throughout the United States, where available, whether they made immediate use of it or not; that whether they could make a living there or not did not enter into it, but whether they had a right there;

That the enlargement of the Quinaielt reservation by the Executive Order of 1873 did not make more fishing grounds; that no more streams were taken in—it simply extended the streams they were fishing on and the fishing was conducted largely at the mouth of the streams; it did not take in any new streams—simply went farther up the old streams; that he has or had no means of knowing whether the fishing question had anything to do with the enlarging of the Quinaielt reservation at that time; that perhaps he did state that he knew what tribe of Indians of this district were fish-eating Indians, but he cannot tell them now, as it has been fifteen years since he was connected with the Indian service; that he cannot

enumerate all the fish-eating Indians, but some of them are Quinaielts, Queets, Quileutes and different bands of their bands; Chehalis, Satsops may have been a tribe at one time, but it is practically a band now; that the Yakimas are not usually classified as fish-eating Indians, as living east of the mountains, are not tributary to the streams—to salt water—that as he understands the term, "fish-eating," it is one whose principal diet is fish; that he thinks all the Indians in Southwest Washington are that class of people. [464]

That by "fish-eating" Indians of the Pacific Coast he would say all the Indians in Southwest Washington come in that category, qualified somewhat in that the Indians on the Prairie are not "fish-eating" Indians—that at a council meeting he attended of the Indians of the Prairie, at the direction of the Department, he intimated to the council that the Government would not favor money payments, but if they made applications for allotments on the Quinaielt reservation they would be heard and considered—having reference to the Cowlitz Indians; that they did not want to come up here and he does not think they were ever allotted, but he was told to tell them they would be considered; that it is just his personal opinion that the Cowlitz did not want to come up here; that he was directed by the Department to tell the Cowlitz Indians to forget the money part of it, but if they would accept the lands, to make application for allotment on the Quinaielt and they would be considered—make application to be enrolled, they would be considered; that he considers the Upper and Lower Chehalis Indians have been considered as one group, rather than tribe; that

in all his dealings with them, and his instructions were along that line of considering them as one group; that he does not think they spoke the same language but does not know; that he thinks the Indians considered them all one band in those days and there was no material difference in their mode of living; that the difference in the method of making a living was general among the Indians of Southwestern Washington—some secured employment from white people, some in logging camps, some followed fishing—some worked at manual labor; that the Chehalis Indians were a farming tribe of Indians;

That it is his recollection that the Chehalis Indians were allotted on the Quinaielt reservation and that the Petit [465] family was one of them; that he does not know if they were given homesteads on the Chehalis reservation or not; that Peter Heck has a homestead on the Chehalis reservation, but that he thinks probably Peter Heck's children were allotted, but does not know; that so far as he knows the Chehalis Indians did not take part in the Medicine Creek Treaty.

That his headquarters while he was Agent from 1908 until 1913 were in Tacoma; that the census rolls were made up both by him personally and under his supervision; that as to the Quinaielt reservation, they had a farmer in charge; that during the year whatever information he could gather such as a birth, or a death, he would make note of it, and at the end of the year would compile those on the reservation as Quinaielts; that then he would go over, get the principal Indians together, check over the roll, correct it—we did this about once a year, in the June, gather up the records of dates of births that the said farmer did

not get—but it may not have been the best way as it was a difficult thing to get an absolutely correct roll—not easy like rolls on reservations where money was involved and every one was anxious to get the names on in case of birth, and off in the case of a death; that one could not expect to place the same reliance upon a census roll made up without that incentive of carrying a money right; Indians living off the reservation would not have the interest to make the trip to the reservation to report and it was up to them to get the information the best they could; that the chief Indians would get together with him and would try to get the heads of families in to testify as to births and deaths;

That he would consider it the best test of an Indian to tribal rights to have that Indian recognized by the tribe as a member; that it could happen that a census roll would [466] carry names on it not rightfully belonging there, and others rightfully belonging there be left off; that errors would occur;

Q. Was it a qualification for allotment during your time, Mr. Johnson, that the prospective allottees be enrolled before being place for allotment?

A. That is a detail that was handled by the Allotting Agent and I cannot answer you that. The Allotting Agent, while we worked concurrently, he worked under separate instructions and that is a detail I cannot answer.

Q. You mean by "separate instructions" he had his particular instructions to perform and you had yours?

A. He was not under me. We worked concurrently but neither over the other.

Q. You collaborated and co-ordinated but each had independent views?

A. Yes, each had independent instructions.

that when he speaks of "enroll" he is speaking of the census roll—roll of the tribe or record of the tribal families; that on the enrollment for allotment during his term as Agent, it was the practice to have the names passed upon by the tribal council before entering them, as to whether they had been recognized or not, and whether according to tribal testimony they were affiliated or part of the tribe by blood or affiliation; that he has known of cases where persons were adopted by the tribal council for reasons of preference alone, persons not otherwise qualified save for tribal favor or preference; that a pure blood Hawaiian from the Islands, the bodyguard of Chief Mason, was adopted into the tribe—but such cases are very rare; that he recalls the case of a white man married to an Indian woman, where the white man [467] was just straight adopted into the tribe—speaking of straight adoption, no question of blood entering in; that if a man is adopted and becomes a member of the tribe, his heirs would be members of the tribe, according to his idea; that he does not see how it can be construed otherwise than as conferring an inheritable right to adoption; in tribal councils it is always considered that when a person has been adopted he has been brought into the family, and they are descended from that person, being lineal descendants of the adoptee and thus included; that it would be lost motion on the part of the tribe to have adopted eight children of the woman previously spoken of, because they already had become members of the

tribe when she was adopted; and that he would say that the children of that woman, when they have children, and their children have children, and so on, they too would be members, the same as a full blood's descendants are members ad infinitum, a person being adopted becoming in the same status as a full blood member of the tribe; that during his time in that capacity that question did not often come up.

TESTIMONY OF H. H. JOHNSON ON REDIRECT EXAMINATION.

That he would consider that three children born to a woman (as in the Walkowsky case) after a woman and her eight children had been adopted into a tribe, would become members of that tribe; that where a woman was simply adopted into a tribe and none of the living children were adopted, that would not hold; the question would be whether the children were born after adoption; that he believes that children born to a person adopted into a tribe previous to the birth of such children, become members of that tribe.

That he knows the Heck family and presumes Lena Heck is of the family of Peter Heck; that he knows the Heck [468] family; does not know the names of the children as he has had no association with the reservation for 15 years; that the Peter Heck family lives on the Chehalis reservation between Oakville and Gate; that he presumes the allotment rolls is a correct statement of facts in stating "Lena 759 and Frank Heck, son of Peter Heck and Arthur 761, son of Peter and Lena, and Norman 762, son of Peter and Lena."

That there was a Hayden family among the Chehalis Indians but does not know about that family particularly nor where it lives.

TESTIMONY OF H. H. JOHNSON ON RECROSS EXAMINATION

That he cannot remember if the Heck family were allotted on the reservation or adopted by the Quinaielt Indians; that the records of the councils should show that; the records of councils will have all that information.

TESTIMONY OF CHARLES ELLIOTT FOR PLAINTIFF—CAUSE 325-E

That he is Charles Elliott, the father of Charles G. Jr., Henry, Ralph and Francis, minors, plaintiffs in 325-E; that he lives at Elliott's Point on the Columbia River and is 56 years of age; that he is an Indian of the Quinaielt tribe and was allotted on the Quinaielt reservation on March 9, 1920; that he has a trust patent.

Plaintiff's Exhibit No. 12—trust patent of Charles Elliott, admitted in evidence.

That he was born at Chinook in Washington; that he now lives at Elliott's Point in Wahkiakum County, Washington, north bank of the Columbia River, right in Dahlia—the name of the postoffice; that it is the Quinaielt Indians who live in and near Dahlia; that the population of Dahlia and Elliott's Point is about 50 and about 90 per cent of the Indians of the Quinaielt tribe; that he knows and associates with J. H. and Josephine Elliott and Louise Henry and knows their children, and his [469] children associate with

theirs; they are together every day and go to the same school; they all belong to the Quinaielt tribe of Indians; that he has always followed fishing as an occupation and fishes on the Columbia river all the way from Dahlia to the mouth of the river; that the principal diet of the Indians living around Dahlia is fish; that Dahlia and thereabouts has been a fishing location all of his life and they fish by seining and drift nets; that Dahlia has been an Indian settlement as long as he can remember, it is on the Pacific Coast, the Indians live there, fish there and have outers' shacks there; that it is known as an Indian settlement because it is built up on the bank of the river, the Indians fish there and *junt* game and ducks there are two old Indian burying grounds there—old relics are found thereabouts, arrowheads, beads; there are old canoes there, clam shells, showing where they camped; stones or rocks with holes dug through them and used for anchors on nets with which they fished, such as they do now; that the fishing stations are about every half mile toward the ocean from Dahlia and that Indians use those fishing locations; the Indians from all along the Coast from the Quinaielt River Basin through Grays Harbor. That there are fishing locations up the river from Dahlia used by Indians and have been so long as he can remember; George Charley goes up there to fish—he knows others but has forgotten their names—Scarboroughs, Old James Julius, Tim Driscoll, his brothers, he himself; that he understands that Driscoll and Jim Julius and George Charley have been allotted on the Quinaielt reservations; that he has attended half a dozen of the meetings at Quinaielt—they had

some he knew nothing about; that he never knew of the Indians at Dahlia having any council meeting that the Indians in the Dahlia community belong to the [470] Quinaielt reservation; that he knows of no separate tribal organization in his community; that all the Indians of his locality associate with each other—the Chehalis, Hoquiams, Humptulips all mingle together; that he and his family live no differently than they have ever lived, no better homes or clothes; that the children of J. H. Elliott, plaintiffs in these cases, are living, Indians, and his nieces and nephews belong to the Quinaielt tribe; that he and his sisters and brothers went up to the Quinaielt reservation and Mr. Mason, the Keeper of the tribe, threw his house open to them and they used his house for two weeks and he told him (the witness) that he belonged to his (Mr. Mason's) people and was related; they stopped, cooked and slept in his house; that they also stayed with Mr. Garfield on the reservation; that Johnnie Cliff and Adeline were there; that he was received all right by all the Indians—welcomed to everything they had—he could have had smoked fish or deer—we cooked right in the man's own house and he sat down and ate with us; we used to go across the river to a place called Woody Island and he knew all the whole country as well as I did; that the Indians all seemed to welcome him and invited him to go hunting with them; that just the week before he visited Johnnie Cliff (or Clipp) there—a full blooded Indian allotted on the reservation; that he saw him last at Taholah, and he has associated with Mr. Mason and a lot of Indians there, some belonging to the Shoalwater Bay and some on the Columbia

River; that he has known Adeline James a great many years; that she previously lived beside his family years ago, about one quarter mile away, then went to Shoalwater Bay and then to Taholah where they have a house; that he had dances with her at Taholah—that as soon as they came in the Indians all came together and had dances and parties—with probably a dozen or 15 [471] present; that his children are minors and have not been at Taholah; each time he went to Taholah they were attending school;

Testifying to the Court's questions; that the "shells" found at Dahlia, a salmon fishery, were clam-shells brought in by the Indians from the mouth of the river, these shells were scattered all over but really although not rightfully belonging there. They are found all along the bank from Dahlia, at places where the Indians had had camping and fishing grounds.

TESTIMONY OF CHARLES ELLIOTT ON CROSS EXAMINATION

CHARLES ELLIOTT testified that he is married to a white woman, has five children, Anne Marie, 18; Henry, 13; Ralph G., 12; Francis, 10, and Charles G. Jr., 16; that none of these plaintiffs have been on the Quinaielt reservation; that he fishes for a living; that Dahlia has a population of about 50 people with perhaps half a dozen families besides his own; that there are Indians living there who call themselves Chinooks; that his association with the Quinaielt Indians has been his visits up there and their visits down to Dahlia when they go there fishing;

That he believes he has visited on the Quinaielt res-

ervation more than half a dozen times but does not remember when he made his first visit, but probably more than four or five years ago, as he has been making yearly visits the past four or five years; that in 1912, his mother and brother went up there to a meeting and he believes he was enrolled then, but it fell through, it being his understanding that the reason for that was that the allotting had stopped, the timberland being considered too valuable for allotment; then later after watching things they went to Mr. Sam's office [472] Mr. Mason, Mrs. Jackson, Mr. Waukenas, and himself belonged there, but they refused us and we had to take it to court;

That his present wife is the mother of his five children; that they were married at his mother's home in Dahlia, are living there now and have been since 1908; that he does not know the distance from Dahlia to the Quinaielt reservation; that there is an ancient burial place in Dahlia where they are still burying people; that he is 56 years old.

That his mother was Lucy Agnes Duchency Elliott, and his father was a white man.

Over objection of Plaintiff's counsel, with exceptions allowed; the following testimony with regard to the line back of the witness's mother was given.

That his mother's name was Mary Rondeau and she was married to Roque Ducheny, whom he never saw, but from hearsay understands he was a half-breed, Indian and French; that he does not know who were the parents of his maternal grandmother, Mary Rondeau; that he never went into details about it, all he knows is that he has heard his mother's

mother say that her mother was a Quinaielt woman; that he does not know anything about his grandmother's father because that is too far back for his time and they never went into details about that at all—hardly ever spoke about it; that he has heard it mentioned, but never took any stock in it, that his great grandmother, his mother's grandmother, was married to an Indian named "Conkumly".

(Admitted by Plaintiff's counsel that witness' great grandmother was married to an Indian named "Conkumly", and that he was a Chinook Indian.)

That his mother's mother, Mary E. Rondeau, lived at Chinook a good many years, and at Dahlia also, that was her last stopping place; she left Chinook and bought a place and [473] lived at Harrington Point and lived there a good many years, and as she was pretty old they took her up to their house at Dahlia and kept her with his mother; that he does not know if she lived all her life before going to Dahlia, at Chinook, but he knows she lived at Chinook first, then Harrington Point, then Dahlia; that his grandmother, Mary Rondeau, died in 1910;

(Admitted by Plaintiff's counsel that Mary Rondeau was not allotted on the Quinaielt reservation.)

That he was living with his present wife at the time the Government issued him his Government patent in 1926; that the reason his children (the plaintiff's) are not present at the trial is because he did not have the means to bring them; that he has cows and pigs at home to take care of, and a motor boat

out on the water—that he had to leave them there to take care of those things while he was gone—that he had two cows; his children are small; that he remembers the trial regarding his mother and himself held before; that Adeline James (or Lohre) who was a witness as to his family history then, is now dead; that Johnson Waukenas, a full blooded Indian, was asked to come as his witness and Mr. Waukenas did come up for the Trial but it was put over a week and the old man and his wife went home and then the old man had a stroke of some kind and was laid; that he had been out to see him the other day and he could not come in; that it is not possible for him to be present at this trial; that Johnson Waukenas and Adeline James, or Lohre, were his principal witnesses in the case regarding himself and his mother.

TESTIMONY OF CHARLES G. ELLIOTT ON CROSS EXAMINATION.

That the way they would have to come to Tacoma from Dahlia it would cost quite a little bit to bring his family Dahlia. [474]

TESTIMONY OF WILLIAM ELLIOTT FOR PLAINTIFFS IN NO. 324-E.

WILLIAM ELLIOTT, being sworn, testified; that he is the father of the plaintiffs in cause No. 324-E; that he is 58 years of age; that he lives at Aberdeen, Washington and has lived there about five years; that he is an Indian of the Quinaielt tribe; that he is allotted on the Quinaielt reservation; that he has received a trust patent for his allotment.

Plaintiff's Exhibit No. 13, being trust patent

issued to William, Plaintiff as guardian ad litem in Cause No. 324-E, admitted in evidence.

That he received the said trust patent in March, 1927; that he was born at Chinook, Washington and lived there about five years; that then he went to Dahlia to live and lived there practically all of his life, with the exception of the last five years; that Dahlia is on the north bank of the Columbia River about 20 miles above the ocean; that practically all the residents of Dahlia, a population of about 50, or 40, when he left there five years ago, were and are Indians of the Quinaielt tribe; that he and his children associated with these Quinaielt Indians; that he, J. H. Elliott and Louise Henry, and their children and that he and his children have always associated with them and their children; that they are Quinaielt Indians; that he is not following any occupation, being laid up with a slight touch of paralysis and rheumatism; that all his life otherwise he has followed fishing in the Columbia River, from the ocean up about 20 miles; that the principal diet of the Indians living around Dahlia and that locality is fish, Chinook salmon, steelheads, blue backs and sturgeon, fresh fish and smoked fish; that there are fisheries all around Dahlia and Chinook from the Columbia bar up for some 30 miles; [475] that these fisheries have been located at such places ever since he can remember; that Indians from all the tribes, so far as he can see, go there to fish, Shoalwater Bay, Quinaielt, Chehalis and Chinook; that Dahlia and Chinook are on the Pacific Coast; that Dahlia and Chinook are Indian settlements; that so far as he knows they have always been Indian settlements;

that they are identified as Indian settlements because for miles along the beach anywhere Indian relics can be picked up of different kinds, steel, stones, bored holes in hammers, arrowheads, spearheads, as he calls them, out of rock; the old burying ground which is very ancient for there never was any burying going on there so long as he can remember; canoes, skulls and skeletons of Indians buried there years ago; also in one of the old canoes, a woman's hair, long and thick and fine; that there are fishing places about every half mile from Dahlia all the way through to the ocean; that Indians, not white people, fish at those locations, that is mostly Quinaielt Indians; that there is a location about ten miles above Dahlia at a place called Katalama and Puget Island, and quiet a few canneries on both sides of Dahlia that came up there lately; that the McGowan cannery is way down at a place called Old Chinook, that mostly Indians fish for and work in that cannery; that ever since he can remember, Indians have fished at these locations; that some of the Indians who fished there are George Charley, Tim Driscoll, Sampson Johns and Henry Strong, that the Indians who fish there are from the Quinaielt reservation; that he has attended three of the Indian councils on the Quinaielt reservation, which were all he could get to at the time; that the Indians who lived at and around Dahlia never had tribal councils or organizations that he ever heard of; [476] that they belong to the Quinaielts; that the Indians of that locality mix with and associate with the Indians north, at Shoalwater Bay, and also with the Chehalis, around Gray's Harbor, the Hoquiams, Humptulips and Quinaielts; that one cannot tell one from the other;

that he and his children live about as they have always lived and associate with the same people they always have; that he knows Josephine Elliott's children and his children associate with hers; that they are Indians of the Quinaielt tribe; that he has always associated with Quinaielt Indians, and offers as an illustration that they go to the reservation, are welcomed at their homes and have a good time; has been to several dances and big feeds and he always says, "make our house your headquarters in Aberdeen," and every time they come up there they come to see us; that prominent Quinaielt Indians, like Robbie Sampson, visited him when he still lived at Dahlia; that Robbie Sampson is an Indian allotted on the Quinaielt reservation; that is about all the association and affiliation he and his family has had, visiting on the reservation for the last five years; go all day Sunday and visit, sometimes take a tent and camp on the reservation and go out fishing and picking oysters and clams and also on the river trout fishing; that the Indians there do not seem to indicate that they are unwelcome; that once when he asked the Indian Justice for a permit to hunt he was told, "You don't need a permit, you are entitled here"; that that Indian justice who told him that is Max Hudson;

That "Old Chinook" was at the place from Scarborough Head to Point Elliott, about 3 miles, now held under tax title by McGowan and renamed McGowan; and Chinook was moved about four miles down to a place called Guyer; that Chinook is not right at Dahlia but nine or ten miles below [477] (other testimony being that it was right at Dahlia).

TESTIMONY OF WILLIAM ELLIOTT ON CROSS EXAMINATION.

That Edna May Elliott (plaintiff in 324-E) is 29 years of age; that Ruth G. Elliott (plaintiff in 324-E) is 25 years of age; William (plaintiff in 324-E) is 23; John is 21, Frank is 13, Jewel is 10; that none of them are present in court; that it has been about 7 years since he lived in Dahlia; that his children are all living with him at the present time; they were born at Dahlia, Washington; that Ruth and Edna are both married, being Ruth Hill and Edna Aronson; that they both have families, husbands working hard, and they could not come as they had to stay and take care of their families; that he is a quarter-breed Indian, that his father was a white man; that for the last five years his children have been on the Quinaielt reservation practically every month, going to Taholah, that Taholah is probably about 30 miles from Aberdeen, that he thinks it is every month, possibly missing a month or two once in awhile, that they go to the reservation; that Dahlia is 20 miles from the Ocean; that besides the McGowan cannery, there is the Altoona Packing Company about 1½ miles below Dahlia; that he would say between Dahlia and the ocean both Indians and white people fish, and probably about half as many white people as Indians;

That he does not know anything about the 1925 census roll of the Quinaielt reservation; that so far as he knows no full-blooded Chinooks live at Dahlia; that there is one full-blooded Chehalis woman, married to a French-Canadian, who lived there, but she died recently; that of late years there have not been any full-blooded Indians there, but there used to be

a great many of them, but they have all [478] died or moved away; that the only association the plaintiffs have had with the Quinaielt Indians is visits and vacations to the reservation during the last five years; that they visited the Lohres and Mrs. Jackson, and he visited Johnnie Clipp and Mr. Garfield about a year ago for a couple of hours; that he visited Mr. Mason, who is in the court room, less than a month before, that is, they talked, he was in a hurry to get out there where they went to big dances, as he played at dances held at the school house at Taholah.

TESTIMONY OF WILLIAM ELLIOTT ON CROSS EXAMINATION.

That he is a brother of Charles G. Elliott, who just preceded him on the witness stand; that he was present when Charles G. Elliott testified as to his ancestral line, that is, his father, mother, grandfather, grandmother and great grandmother; that his knowledge of the family history is practically the same as given by Charles G. Elliott, as he has heard it talked over lots and lots of times.

CHARLES G. ELLIOTT RECALLED AS WITNESS FOR PLAINTIFFS.

That Mr. Mason and Mr. Jackson, who are in the court room during the giving of testimony, have been at Dahlia, Mr. Mason being there last year and stayed practically all day and all night, that he thinks Mr. Mason stopped two nights with the witness' sister Mrs. Henry; that Cleve Jackson and his *eife* visited at Dahlia with Driscoll, but he (the witness) did not get a chance to see them as he was fishing on the river.

TESTIMONY OF ROSE PEERS PICKERNOLL, PLAINTIFF WITH MABEL PEERS WHITE AND AMELIA PEERS ALDEN NO. 307-E.

ROSE PEERS PICKERNOLL, being sworn, testified that she is 57 years old and lives at Dahlia; that she is an [479] Indian; that her mother and father were both Indians; that she was not allotted land anywhere; that a good many of her relatives on both her mother's and father's sides have been allotted land; that she has no brothers, but has four sisters; that her father, an Indian, was Henry Peers, and thinks he belongs to the Lower Chehalis tribe; that he was not allotted land anywhere; that her father's mother was Ellen Pellard, an Indian; that so far as she knows her father's mother was not allotted; that she died before the allotting came; that she does not know how many children her father's mother had, but she knows there was her father, Henry Peers, Mrs. Adeline Lohre, and Archie Pellard; that Adeline Lohre, her father's half-sister, is allotted on the Quinaielt reservation, that is Adeline Lohre and witness's father had the same mother; that Adeline Lohre has seven or eight children who are allotted land on the Quinaielt reservation;

That her mother was Julia Ducheney, Mrs. Agnes Elliott's full sister; that she is 57 years old and has lived at Dahlia practically all her life.

Admitted by defendant that witness will testify that Dahlia is an Indian settlement—practically the same as given by Charles and William Elliott, as to the character of Dahlia.

That she is a first cousin of William, Edna May and Charles G. Elliott; that Agnes Ducheney, her mother's sister, was a full-blooded Indian and has been allotted land and is the mother of William A. and Charles G. and J. H. Elliott and Louise Henry; that she has known these people all her life and lives in the same locality; that she knows the children of all these people just above named and to her knowledge they are all living; William Elliott is living in Aberdeen and the rest at Dahlia, except John; that she knows Charles G. Elliott, Jr., [480] Anna Marie, Henry, Ralph G. and Frances Elliott, who are living at Dahlia; that she knows Lula M., Sophie M., Carolyn M., Emma S., and Norma C. Elliott, and that they are living at Astoria, Oregon, and formerly lived at Dahlia; lived at Dahlia from birth until they were burnt out, that Joe Elliott's house in Dahlia burned down and then they went to Astoria, Oregon; that she knows Louise E. Henry, Christine Henry and June Henry; that they are living at Dahlia;

That she (the witness) is married to an Indian allotted on the Quinaielt reservation; that she is a sister of Mabel Peers White and Amelia Peers Alden, plaintiffs in No. 307-E; that Amelia Peers Alden lives in Dahlia but she cannot attend the trial as she is an invalid; that Mabel Peers White, her sister, is present; that they are full blooded sisters, the children of Henry Peers, an Indian, and Julia Ducheney, an Indian;

That Archie Pellard is a half-uncle to witness, the son of Ellen Pellard, her grandmother; that he is a full-blooded Indian; that Adeline Lohre is her aunt, the daughter of her grandmother, Ellen Pell-

ard; that she had a home at Taholah, on the Quinaielt reservation, lived there, her children were born and raised there; that she visited her aunt, Adeline Lohre at Taholah on three different trips and attended some of the council meetings that the Indians treated her very friendly.

TESTIMONY OF ROSE PEERS PICKERNOLL ON CROSS EXAMINATION.

That she is married to Mr. Pickernoll; that she has been married twice, her first husband was a white man named Gricks; that Nathan Pickernoll, her husband now, is an Indian and he fishes for a livelihood. [481]

CASE OF VIRGINIA WALKOWSKY, CATHERINE WALKOWSKY, ALVIN WALKOWSKY and EDNA WEISS, CAUSE NO. 315-E.

It is agreed between the counsel for the plaintiff and the defendant that the agreed statement of certain facts filed in this case may be received in evidence and the same should be herein inserted in full at this point, as follows:

"That Kate Walkowsky, the mother of Virgina Walkowsky, Alvin Walkowsky, Catherine Walkowsky and Edna Weiss, minors, was born September 1, 1874. That her Indian name was Tah-toh-atl, and that she is a full blooded Indian.

That Kate Walkowsky was born at Oysterville, Washington, on Shoalwater Bay.

That said Kate Walkowsky on January 9, 1893, married John Walkowsky, a white man.

That the following are the names of the children

and the dates of their birth, which were born to said Kate Walkowsky and John Walkowsky:

Albert Walkowsky, born March 31, 1894;
Louise Walkowsky, born August 1, 1895;
Frank Walkowsky, born April 9, 1897;
Ida Walkowsky, born March 3, 1899;
Grace Walkowsky Griggs, born June 28, 1900;
Leonard Walkowsky, born October 26, 1904;
Rose Walkowsky, born June 16, 1906;
Kenneth Walkowsky, born Jan. 19, 1909;
Virginia Walkowsky, born August 4, 1912;
Alvin Walkowsky, born May 17, 1914;
Catherine Walkowsky, born August 26, 1916.

That all of the above named children, with the exception of Virginia, Alvin and Catherine Walkowsky, have received allotments upon the Quinaielt reservation.

That Virginia Walkowsky, Alvin Walkowsky and Catherine Walkowsky were born to the said Kate Walkowsky and John Walkowsky after the adoption of Kate Walkowsky and her eight children by the Quinaielt tribe of Indians. That the said Kate Walkowsky after the birth of the above named Catherine Walkowsky separated from the said John Walkowsky and [482] divorced him and married one Robert Weiss, a white man, by whom she had one child, Edna Weiss, born on the 18th of February, 1919.

That the mother of Kate Walkowsky was an Indian named Spieten, who was a member of the Wynooche band of Indians in the State of Washington. That her father was an Indian named Tatl Tahe, and he was a full blooded Chinook Indian."

TESTIMONY OF CHARLES E. ROBLIN FOR THE PLAINTIFFS 315-E.

CHARLES E. ROBLIN, being sworn, testified that he is the Allotting Agent of the Quinaielt reservation; that he made an investigation to find out and took up with the Department whether or not Kate Walkowsky and her eight children, Albert, Louise, Frank, Ida, Leonard, Rose, Grace and Kenneth have ever been adopted by the Quinaielt tribe of Indians; that the Secretary approved the adoption on September 28th, 1910.

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION.

That he did not have occasion to examine in, and did not do so, the facts and circumstances surrounding the adoption; that he only investigated and found that the fact appears that they were adopted, that Kate Walkowsky applied for adoption by the Quinaielt Indians for herself and her eight children (named above) and her application was presented by the Superintendent to the Quinaielt tribal council and they voted favorably on it as to both the mother and each of the eight children; the Superintendent made a report of that council meeting, submitting the application to the Commissioner of Indian Affairs, and upon his recommendation, the Secretary of the Interior approved the adoption of Mrs. Walkowsky and her eight children by the Quinaielt tribe. [483]

TESTIMONY OF CHARLES E. ROBLIN ON REDIRECT EXAMINATION.

That according to the stipulation filed, these eight children as named, and the mother, Kate Walkowsky, have been adopted by and allotted land on the Quinaielt reservation; that trust patents have been issued for Mrs. Walkowsky and seven of the children; that the eighth child is included in a schedule which he has just submitted on December 19th, 1927, and which has not yet been approved and passed for patent.

TESTIMONY OF CHARLES E. ROBLIN ON RECROSS EXAMINATION.

That subsequently Mrs. Walkowsky presented an application for their adoption by the Tribe in 1922, apparently acting upon the assumption that the old adoption was no good; that he merely surmises that as the reason feeling perhaps she thought it was no good perhaps because she had not received the allotment, the action of the Secretary was ineffective, and so in 1922, she made application for adoption of herself and all of her children (eleven) and he is not quite clear as to what action was taken, he only knows that the application for the subsequently born children has been denied by the Secretary.

TESTIMONY OF CHARLES E. ROBLIN ON REDIRECT EXAMINATION.

The Secretary denied the enrollment, any authority for enrollment of children born subsequently to the adoption of Mrs. Kate Walkowsky and her eight chil-

dren; he does not believe they were voted on, but that the tribe refused to consider any applications;

That under the present rules of the Department children born to Kate Walkowsky, after she and her eight children had been adopted, enrolled and allotted on the reservation [484] even though living on the reservation, and by the same father, such subsequently born children, would not be entitled to enrollment; under some regulations issued in 1904, and he believes changed in 1907, and prior to 1907, he believes children born under such circumstances would be entitled to enrollment; but under the present ruling of the department they would not be entitled to enrollment; that the basis for the regulation is that the adoption by the tribe is a personal privilege extended to the person for personal consideration; that the understanding is that it is a qualified adoption for one purpose only, that they become full members of the tribe adopted into as to their own rights, but not as to any other members of the family; that if Mrs. Walkowsky gave birth to a child after her adoption when she was, say, living on the reservation, and took that child, not a member of the tribe, on the reservation, the Government could have properly excluded that child from going on the reservation, and yet permit her to go on it to live.

TESTIMONY OF CHARLES ROBLIN ON RE-CROSS EXAMINATION.

That so far as he knows, Mrs. Walkowsky is not a resident of the Quinaielt reservation; that in having previously spoken of "subsequently born" children he was referring to the claimants now suing for allotments.

Plaintiffs rest in causes Nos. 324-E, 325-E, 312-E, and 326-E.

TESTIMONY OF HENRY STRONG FOR THE DEFENDANT IN CAUSE NOS. 324-E; 325-E; 312-E; and 326-E.

HENRY STRONG, being sworn, testified, that he is an Indian of the Quinaielt tribe, 66 years of age; allotted on the Quinaielt reservation, but not adopted into the [485] Quinaielt tribe; that he lives at Shoalwater Bay, and has for 30 or 35 years and before that on the Columbia River at a place called Gray's Bay and at a place which was afterward established and called Dahlia; that he lived at what is now called Dahlia for about 15 years; that he knows William Elliott, Charles E., Joe Elliott, Louise Henry, and their families, and has known them all his and their lives, was practically raised with them; that he knew them when he and they were young at Dahlia.

On stipulation, it is agreed, that the testimony of Henry Strong as to the character of Dahlia as an Indian settlement, will be the same as that of the three preceding witnesses.

TESTIMONY OF HENRY STRONG ON CROSS EXAMINATION.

That he was allotted on the Quinaielt reservation about 1908.

TESTIMONY OF CLEVELAND JACKSON FOR THE PLAINTIFFS.

CLEVELAND JACKSON, being sworn, testified that he is an Indian of the Quinaielt tribe living at

Moclips; that he is a Quinaielt Indian by reason of Chief Taholah of that tribe, being his grandfather;

That he knows William A., Charles G., and J. H. Elliott and Louise Henry, and family; that he has known and always considered them as Indians; that he has been through the Dahlia locality.

Agreed by counsel for both parties that the testimony of Cleveland Jackson regarding the character of Dahlia as an Indian Settlement, over the period he is qualified to testify, being but 35 years of age, will be similar to that of the preceding witnesses. [486]

STUART H. ELLIOTT'S TESTIMONY FOR THE PLAINTIFF.

STUART H. ELLIOTT, being sworn, testified that he is one of the attorneys for the plaintiffs in these Elliott cases; that in each case, the parents of these children came to him with certain selections of land, which he submitted to Mr. Roblin, the Allotting Agent; in most cases witness sent them in to the Commissioner of Indian Affairs, he having given Mr. Roblin as much as he knew about the families with a description of the land they were claiming, except in the Joe Elliott and Lula M. Elliott—312-E case, where the record is a little different, as claimed in Paragraph 6, which is admitted, and the next paragraph, to the effect that they were forwarded to the Secretary of the Interior, which is not admitted, but it is admitted that they refused to allot these plaintiffs the land; in case No. 326-E, he addressed a communication to Charles E. Roblin, April 8, 1927, filing selections for Agnes, Christine and June Henry, and

Louise and Hayden, giving their names, telling who the people were, and a description of the selections; in 325-E, he addressed a communication to Mr. Roblin, April 8, 1927, filing selections for Charles G. Elliott, Jr., Ralph G., and Francis, children of Charles G. Elliott who had been allotted by Court decree, and called attention to the relationship, and asked him to take the matter up with the proper authorities; in 324-E, July 27, 1926, he wrote to Mr. Roblin in behalf of Frank G., William, Ruth G., Hill and Edna May Elliott, children of William A. Elliott, telling him where they lived, etc., and the selections to be filed;

That they were all denied allotments, not entitled to allotment or enrollment on the reservation, and that he [487] would not have filed this suit if they had not been; that he is confident that they were denied by a representative of the Department.

It is here stipulated by the parties in all the cases on trial herein, that the plaintiffs in each instance have made selections for allotment and that the allotments have been objected to by the Department.

Plaintiff rests in Cause Nos. 312-E, 324-E, 325-E, and 326-E.

TESTIMONY OF WILLIAM GARFIELD, FOR THE DEFENDANT.

WILLIAM GARFIELD, being sworn, testified that he is an Indian of the Quinaielt tribe and that he was raised on the Quinaielt reservation; that he knows Charles G. Elliott, Jr., Anna Marie, Henry, Ralph G., and Frances Elliott, all minors, (plaintiffs

by Charles G. Elliott, Guardian in 325-E) that he knows the persons whose names were read off; that they are not members of the Quinaielt tribe of Indians; that they do not belong to the Quinaielts.

Admitted by Plaintiffs that this witness will testify to the same effect in each of the cases being considered 312-E; 324-E and 326-E, that they are not members of the Quinaielt tribe.

TESTIMONY OF WILLIAM GARFIELD ON CROSS EXAMINATION.

That he could not name off the names of the children of William Elliott, *of* of Charles Elliott, except Charlie; that he does not know the names of the children of the Elliott's because they never came to Taholah; that he does not know the names of Louise Henry's children, or William G. Elliott; that they live on the Columbia River, where they belong; that he did not know of the Cosmopolis Treaty, but that his father did, was what he meant to tell; that [488] that with regards to Indians, "when Mr. Indian is where he belong, he live there. You white people want to talk about Indians. Well, you don't know it. Look at Sampson Johns. His father lived down there, die there; not like white people, they live where they belong all the time—that is the way of the Indian people."

TESTIMONY OF WILLIAM GARFIELD ON REDIRECT EXAMINATION.

(By the Court) Ask leading questions to save time.

That none of these Elliott children have been adopted into the Quinaielt tribe, that he does not know if they were; that he does not know any Quin-

aielt Indians who live on the Columbia River now; that the Quinaielt Indians live in Quinaielt and will die right there.

Agreed by counsel for both parties hereto that testimony of this witness in each of the four cases now being considered will be the same.

TESTIMONY OF HARRY SHALE FOR THE DEFENDANT.

HARRY SHALE, being sworn, testified, that he is an Indian of full-blood; that he is part Quinaielt and part Quileute Indian, raised on the Quinaielt reservation; that on his father's side he is one of the leaders of the Quinaielt tribe, his father was one of the principal signors of the Treaty, and from his mother's side, the Quileute side, her father also was one of the principal signors of the Treaty; that he has been one hundred per cent interested in the Quinaielt tribe.

(As regards case No. 312-E) That he does not know Lula M. Elliott, Sophie M. Elliott, Carolyn M. Elliott and Marion E. Elliott, Emma S. Elliott and Norma C. Elliott, minor children of J. H. Elliott; that he knows the Elliotts but does not know which is which; that they have not been [489] in the reservation long enough to get acquainted, that he knows about the Elliotts; that he knows the members of the Quinaielt tribe, all of them because he was born and raised on the Quinaielt reservation; that he was appointed head chairman by the Indian Council; that if the Elliott children, children of Charles G. Elliott testified they are members of the Quinaielt tribe of Indians they would not be telling the truth as

he understands it, because the names of the Elliott have been brought before the Council meeting at the reservation, their names were brought before the Council and the tribe turned them down because they were strangers; that they heard the names of the Elliotts three years ago seeking allotments but never before that heard of them and if there had been no such thing as allotments, would not have heard of them then; that he does not know of any Quinaielt tribe of Indians that live on the Columbia River; that they live on the Quinaielt reservation; that as a rule the members of the Quinaielt tribe are stationed there where their fathers were born.

TESTIMONY OF HARRY SHALE ON CROSS EXAMINATION.

That after this suit, about last April, Charles Elliott asked him about some lots and he gave him two lots after he got his title in court; that after that William Elliott and two of his boys had dinner with him at his home at Taholah; that he attended the 1912 Council; that he does not recall if the names of the Elliotts were put up at the time of that Council, as it is such a long time and hundreds of names were brought up at that meeting.

TESTIMONY OF GEORGE CHARLEY FOR THE DEFENDANT.

GEORGE CHARLEY, being sworn testified that he is a member of the Quinaielt tribe of Indians, part Quinaielt [490] his mother was a full blooded Quinaielt, his father a Chehalis and also a member of the Chinook tribe; that he has no white blood in him; that he is very well acquainted with the affairs

of the Quinaielt Indians, knows the history of all the Quinaielt Indians, that is, the living and most of it as to those who are dead; that he does not know Charles G. Elliott, or the children of Charles G. Elliott; that he knows all the members of the Quinaielt tribes of Indians; that he understood Charles G. Elliott is entitled to allotment on the Quinaielt reservation through adoption; that as to Charles G. Elliott's children, he does not know as he never knew them; that he is the George Charley who went and goes to the Columbia River to fish, but that he never associated with the Elliott family down there and never got acquainted with them; that he does not think there are any Quinaielt Indians at Dahlia; that so far as he knows no members of the Quinaielts have moved down there in the history that he knows.

Agreed by counsel for plaintiffs and defendant, that the testimony of George Charley will be identical as to all the plaintiffs in all the Elliott cases on trial herein.

That he does not know of any member of any of the Elliott families ever having attended any tribal feeds or tribal dances, or that sort of thing; that they do have tribal feeds and tribal dances and he goes to them and always has.

TESTIMONY OF GEORGE CHARLEY ON CROSS EXAMINATION.

That they have had tribal dances and feeds; that he never knew Charles G. Elliott until last year; that he has not known him for 15 years; that he met him for the first time last year; that he has fished a

lot around Chinook and [491] down there, but is well acquainted around Chinook Beach but not Chinook; that he has fished there most all the time; that he lives on the Quinaielt reservation part of the time but most of the time in Georgetown and traveling all the time; that Georgetown is near Tokeland on Shoalwater Bay; that Georgetown was named after him.

TESTIMONY OF SAMPSON JOHNS FOR DEFENDANT.

SAMPSON JOHNS, being sworn testified as follows:

On consent of both parties Harry Sahle was sworn and acted as interpreter for the Government, and Cleveland Jackson as interpreter for the Plaintiffs.

That he knows all the members of the Quinaielt tribe; that he knows no member of the Quinaielt tribe by the name of Elliott, they are not members of the tribe; that he has known only one Elliott and that is the attorney; that he does not know any Quinaielt Indians that live on the Columbia River;

(Counsel for Plaintiffs concede the Quinaielt Indians Tribe do not live on the Columbia River.)

That the Chief of the Quinaielts, before his death, had stated to his tribe at Quinaielt at the council meeting that they shall be in, moreover—you might say, ¾ white should not be permitted in to the tribe; all they are after is just timber money and claim their blood to the Quinaielt tribe; that is all they wanted is just the money off the reservation; the Quinaielt

reservation was set aside for the Indians alone; that he does not think the Government or the Indian have a voice in that either, but the Indians who belong to that reservation; in his opinion he feels that there shall be no more land to be allotted to strangers or those who are not related to the Quinaielt tribe; [492]

Regarding questioning as to if he understood what was the definition of "fish-eating" Indians years ago, he stated, "that most all Indians depended on fish for a living along the coast";

That he considers the two Mr. Elliotts who testified, as white people.

TESTIMONY OF SAMPSON JOHNS ON CROSS EXAMINATION.

That he is part Lower Chehalis Indian and part Chinook Indian; that he lives at Copalis, in the neighborhood of 20 miles from the Quinaielt reservation; that most all of the Indian people of the Quinaielt reservation are his close relatives by blood; that he often puts in long times on the reservation as three of his children are married and live there; that he has always lived at Copalis; that he is a full-blooded Chinook and Chehalis Indian and he feels that only Quinaielt Indians should be permited on the reservation as he feels that reservation was made for Indians only.

TESTIMONY OF SAMPSON JOHNS ON RE-DIRECT EXAMINATION.

That generally an Indian does not migrate, leave the home of his fathers and go elsewhere to live; he has heard the Elliott people state that they are blood

relatives of the Quinaielts; he would like to know where they get their information. He was well acquainted with Mary Ducheney, the grandmother of the Elliotts. His mother and father often visited in their home and she told him that she was related to one Hotkis, who was one of the leading people of the Lower Chehalis. [493]

TESTIMONY OF SAMPSON JOHNS ON RE-CROSS EXAMINATION.

That the original home of the Chinook Indians was from below Fort Columbia up to what is called Scarborough Hill, a hill up the Columbia River; that he was never adopted by the Quinaielt tribe, as he did not need to go through adoption as he is blood-related to the leading people of the Quinaielts; that he has hunted sea otter on the ocean in a canoe; that the Upper Chehalis did not hunt sea otter because they were afraid to go out on the ocean.

TESTIMONY OF BILLY MASON FOR THE DEFENDANT.

BILLY MASON, being sworn, testified that he is the Chief of the Quinaielt tribe of Indians; that he knows the four Elliotts, Charles G., his brother, J. H. and Joe—all four who testified; that he does not consider the children of these four Elliotts as members of the Quinaielt tribe because they are not members.

TESTIMONY OF MRS. WILLIAM GARFIELD FOR THE DEFENDANT.

MRS. GARFIELD, being sworn, testified that she is Rosa Garfield, a member of the Quinaielt tribe;

that she knows most of the members of the Quinaielt tribe and has associated with them all her life; that she is about 57 or 58 years old; that she knows the Elliotts but does not know their names, which is which; that she has never seen the children of these Elliotts; that she does not know the children of any of the Elliotts who testified here today; never saw them; that she thinks they belong to the Chinook Indians; that she does not believe any Indians live on the Columbia River; only white people live there; that she does not know the Elliott boys, or their children; that she considers the two men (indicating) as white men; that she does not think she knows of any of her neighbors [494] or friends who are Indians who moved from Quinaielt and made their home elsewhere.

TESTIMONY OF MRS. WILLIAM GARFIELD ON CROSS EXAMINATION.

That she has just heard about the 1200 allottees on the allotment roll of the Quinaielt reservation but does not know who they are, the names—cannot find out the names; that they heard there were that many allottees; that she does not think she and her husband know any of them.

Q. You just know the people who live on the Quinaielt river—Taholah—is that not true?

A. We don't know the names of them.

Q. Now, don't you think, Mrs. Garfield, that any person of half blood or less is a white person? You don't consider them as Indians, anybody less than a half breed?—do you consider those Indians or white?

A. When they are one-eighth, we call them white people.

Q. Now, full blood Indians are like you and Mr. Garfield and these people are (indicating), they don't like mixed breeds?

A. The half breeds *won't* like Indians; they won't look at us.

TESTIMONY OF CHARLES E. ROBLIN FOR THE DEFENDANT.

CHARLES E. ROBLIN, being sworn, testified that he is the Allotting Agent in the Indian Service; that the papers handed to him and referred to by counsel as Defendant's exhibit No. A-3 in the Elliott cases, Nos. 312-E, 324-E, 325-E and 326-E, is photostatic copy of three affidavits made by Agnes Elliott in April, 1912, certified to by the Assistant Commissioner of Indian Affairs as true copies of the original papers on file in the Indian office. [495]

Defendant's Exhibit No. A-3, being photostatic copies of papers, certified to, as first above described, admitted in evidence over the objection of Plaintiff, and exception allowed.

TESTIMONY OF W. B. SAMS FOR THE DEFENDANT.

W. B. SAMS, being sworn, testified that he is the Indian Agent at Hoquiam; that so far as he knows there are no Indians living on the Columbia River that are considered by him as Quinaielt Indians.

(This to go as to all the cases at this time.)

That he has kept a separate, distinct roll of the Upper Chehalis tribe, and always has; that legislation has been passed for the benefit of the Upper Chehalis Indians as a distinct unit, they are mentioned

as a distinct tribe by the Act of Congress, in a couple of years granting it to bring claims against the Government, They mention the Upper Chehalis have a right to sue on their own behalf.

TESTIMONY OF W. B. SAMS ON CROSS EXAMINATION.

That he did not bring that roll of Upper Chehalis Indians with him but can produce it the next day; that he brought the roll of the Quinaielts; that he heard Mr. Johnson's testimony that these Indians including the Upper Chehalis were on exactly the same rolls as William Garfield and the other Indians but that the roll in his office shows that is not true; they never were on the same roll—that at the time Mr. Johnson was there a separate roll was kept even of the Humptulip Indians—in rolls made up separately; that since, after the allotments, the Humptulips have been brought in with the Quinaielts because of being so closely affiliated; that Sampson Johns is now a member of the Quinaielt tribe and on the Quinaielt roll; that after Upper Chehalis Indians are allotted on the Quinaielt [496] reservation they are carried on the Quinaielt roll, those allotted on the Quinaielt reservation by adoption; that since the Bay Center Indians have been allotted they have been put on the Quinaielt roll; that a good many are not enrolled until after they are allotted; that what he means is that the Chehalis Indians have a separate and distinct roll and he has made allotments on the Chehalis reservation; that since he has been superintendent he has made 17 allotments to the Chehalis Indians on the Chehalis reservation of 20 acres each; not homesteads,

but allotments that had been a reserve for school purposes but had been abandoned for a school and was allotted by the Secretary of the Interior to the Chehalis Indians only. Those allotments took all but 5 acres of that land; after allotment there are a large number of Chehalis Indians on the same census roll with the Quinaielts, and Upper Chehalis too, but only after allotment on the Quinaielt reservation. That some of those allotments were made during the first allotments which ended in 1910, and there has been some made since to those adopted since; that there might have been allotments made to Indians never adopted in the early allotments, he does not know, but not in the late ones; that five or six allotments have been made during the recent allotments in 1925, but they were enrolled members of the tribe by adoption; that all members of the Upper Chehalis Indians who have been allotted since 1925 were members of the Quinaielts by adoption; before that he was not the Agent; the names are on the roll, the Heck family, the Haydens, they are Humptulips but have lived up at Oakville all their lives in the Upper Chehalis country, the Petits were adopted into the tribe; that John Smith, the head man of the Upper Chehalis, was dead before he (the witness) went up there; [497] that he knows only of an Ed Smith who lives at Mud Bay but not on the Upper Chehalis reservation; that some of Ed Smith's children were adopted; that Peter Heck and Joe Petit are considered the head men of the Upper Chehalis and two of Joe Petit's children were adopted and allotted; that there are but 15 or 20 or thereabouts of Upper Chehalis Indians on the roll, that is about 12 or 14 or somewhere along there have

been adopted and allotted; that the Parsons family at Oakville he thinks was adopted too; that they are Lower Issaqually Indians who have lived over there all their lives; that the Hayden family consisting of John, Bertha, Jessie, Charlie and Julia were in the first allotment and in the second allotment since 1925, Lilly Hayden, Elmer, John, Jr., Clifford, Dorothy and John Junior; that one Heck *sone* has been allotted on the Chehalis reservation; that Charlie, Mary, Walter, Andrew and Lawrence Petit are now at the Castle Rock country and do not belong to the Chehalis reservation; they are related to the Quinaielt tribe; they were allotted because they were adopted by the Quinaielts on the Quinaielts reservation; that Mary Barichio who is not a plaintiff in these suits lives on the Chehalis reservation, Bay Center is where she belongs; that this man named John Smith, died before he (the witness) came there; that his daughter Maggie, is married to a Petit and her two children were allotted by adoption; that the reason he answers that all that he has been asked about have been allotted because they were adopted, is because they were; that all the Indians that have been named to him are adopted Indians on the Quinaielt roll; that as to the ones allotted on the early schedule, he cannot say as he can find a record of the adoption of only a few of those; just a few, but he does not know how they were [498] allotted; that he thought they were speaking of all Indians; that as to the Upper Chehalis Indians he does not know of any Upper Chehalis allotted in the early allotments; that referring back to the Hayden family spoken of in questioning and testimony, they are not Upper Chehalis, they belong with

the Oihoit crowd; that the census rolls and the early allotment instructions not produced were introduced in the Elliott cases and are now in San Francisco; that he had asked for their return but the Clerk had told him he could not get them.

TESTIMONY OF CHARLES E. ROBLIN ON DIRECT EXAMINATION RECALLED FOR DEFENDANT.

That Charles Petit and his wife, Mary Petit and children, Ernest, *Adnrew* and Walter Petit were adopted in 1909 by the Quinaielt Indians, the adoption and enrollment being approved by the Secretary of the Interior on August 30, 1909; Lawrence and Blanche Petit, children of Joe and Maggie Petit were adopted at the council meeting of June 26, 1925, and the adoption approved by the Secretary of the Interior on September 29, 1926, the last being allotted by him, and the others by Mr. Archer in 1910; that his record would not show what tribe any of the other Indians mentioned as belonging to the Upper Chehalis in the previous testimony, belonged to.

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION.

That he first came to the Quinaielt reservation to go into this work in 1916; never had anything to do with the Quinaielt reservation prior to that time.

Government rests in the Elliott cases. [499]

Case of KATE WALKOWSKY, CATHERINE WALKOWSKY, ALVIN WALKOWSKY AND EDNA WEISS, Docket No. 315-E.

TESTIMONY OF KATE WALKOWSKY FOR PLAINTIFFS.

MRS. KATE WALKOWSKY, being sworn, testified that she is 53 years of age and that she lives at South Bend; Washington; that she is the mother of Virginia, Catherine, Alvin Walkowsky and Edna Weiss; that she is a full-blooded Quinaielt Indian; that South Bend is on Shoalwater Bay; that Virginia is 15 years of age; Alvin, 14; Catherine, 11; and Edna, 8, and that they all live with her; that none of them except Edna, the youngest, are present in court with her; that she supports the children; that three of these children were born in Oysterville, and Edna in South Bend; that they never lived any place but on Shoalwater Bay; that the father of the first three was John Walkowsky, a white man engaged in the oyster business at Oysterville; that these children, the plaintiffs for whom she is now suing, were born, reared, and are now living as she and her other children who have been allotted lived; that they live no differently than they did 25 years ago; that she (the witness) was born in Dahlia and has lived in the locality all her life, having gone to Shoalwater Bay when she was 12 years old and her sister having died, and lived at Shoalwater Bay ever since; that there are a few Indians living in the immediate neighborhood of where she lives, Mrs. Oliver and family; Mrs. Woodcock, a sister of Mrs. Oliver, and the Armstrong family; and many other families—cannot think of any

others by name—yes, the Calhoun family and the Bailey family; that the Pickernoll family live at Bay Center; that all these Indians she has named and that have been named to her are Indians and have been allotted [500] on the Quinaielt reservation; that she knows Frank Hyasman, who is allotted and lives at Taholah on the Quinaielt reservation; that he is related to her; that she has no other relatives allotted on the Quinaielt reservation other than Frank Hyasman and her own children, that she knows of, can remember; that she was married to her last husband in 1919; that he is dead and while he lived they lived in Oysterville, just across from South Bend; that since her marriage to Mr. Weiss she has been living in South Bend.

TESTIMONY OF KATE WALKOWSKY ON CROSS EXAMINATION.

That she does not know when she became a member of the Quinaielt tribe; that she was adopted but does not remember the year, it has been so long.

(Date of adoption admitted by plaintiffs in the Statement.)

That her father's name was Joe Mose (admitted to be a Chinook Indian).

That her mother belonged to the Quinaielts; that she (the witness) has never lived on the Quinaielt reservation, but she is living among Indians right now; that she has attended a tribal meeting of the Lower Chehalis Indians at Montesano about two years ago; that her children did not attend that meeting; that her oldest child was 15 years old and that he goes to school.

TESTIMONY OF KATE WALKOWSKY ON REDIRECT EXAMINATION.

That her youngest child, Edna, is in court.

(Said child is pointed out and stands up.) [501]

TESTIMONY OF MRS. KATE WALKOWSKY ON RECROSS EXAMINATION.

That she is a full-blooded Indian; that her mother died when she was two years of age and her father when she was quite young and that she was reared by an old Indian woman by the name of Mrs. Mary Wilson, who was related to her; that Mary Wilson adopted her when she was a child, when her mother died; that her mother died at Dahlia; that she does not know the population of Dahlia as she was a rather small child and it has been some years since she lived in Dahlia; that before that place was called Dahlia, it was called Pillar Rock.

Plaintiff rests, with case to be held open as to Bay Center and South Bend Indians, or really consolidated with immediately following cases.

Defendant rests on filing second amended answer. [502]

Cases of MARY BARICHIO PETIT; MORRIS PETIT; ELLIS A. PETIT; OSCAR BRIGNONE, Minors by PAUL PETIT, Guardian ad litem. Docket 320-E.

DEWEY BARICHIO; LEDA E. BARICHIO; ROMIE D. BARICHIO; ANDREW B. BARICHIO, Minors by VINIE WILSON BARICHIO, Guardian ad litem. Docket No. 321-E.

TESTIMONY OF L. L. BUSH FOR THE PLAINTIFFS.

(Testimony of this witness to go as to Kate Walkowsky also.)

L. L. BUSH, being sworn, testified, that he is a farmer residing at Bay Center, 61 years of age, has lived in the State of Washington 57 years and of that time for 51 years at Bay Center; that he has several lines of small interests, but calls himself a farmer; that he lives toward the southeast part of Bay Center, or on Shoalwater Bay; that he has personally known the Indians and their families around Shoalwater Bay for 50 years, most of them; that he was 4 years old when he went to Shoalwater Bay; that he is acquainted with the Indians around Oysterville, but that there are few of them there now, and with those that have been there in years gone by; also at South Bend and other points around Shoalwater Bay; that so far back as he can remember he is acquainted with the Indian history of that district; knows most of the surviving Indians around Shoalwater Bay and has been acquainted with perhaps all of them who have been

around there as residents in the past 30 years; that all he knows about what reservations they are enrolled on is by common report; that he has not seen any rolls; that they are allotted land at Quinaielt;

That he knows Kate Walkowsky and has known her since she was a young girl; that he knew her husband, Mr. Walkowsky, engaged in oystering, mostly; that he does not [503] know her children by individual names, but by sight as members of the Walkowsky family; that she was considered as an Indian; that when she would come to Bay Center, she visited Indian people; that he did not know her father personally, but traditionally he was a Chinook Indian; that he did not know her mother, but traditionally she was a Wynooche; that the Wynooche band is a branch of the Chehalis, on the north side, the lower part of the river; that his knowledge of the Indian bands around Shoalwater Bay and Gray's Harbor and north as far as the northern boundary of the Quinaielt reservation is from having wrestled, boxed, gone to school, worked and been friendly with them, learning some of the Chinook jargon and of the Chehalis language, more or less, as a boy; has been inquisitive of their ways, talked them over with some of them, and with a few men as to the ethmological relations, and has the acquaintanceship of Dr. Borah of the Columbia University, who is compiling a Chinook textbook, and derived much information from him; sometimes corresponded with the Smithsonian Institution as to questions of Indian races, and with Dr. Frank Tenberg, who 15 years ago was here attempting to get trace of the language or grammar of the Silliquah Indians; that as regards the tribes or bands

of Indians, those living in the communities about Gray's and Shoalwater Bay belong to he would say, that in his country there are main stocks of Indians represented by the Chinook, Salishan and Athapascan; the Chinooks represented by the Chinook proper on the Columbia and the Willapah Bay, and the Willapah, distantly related to the Chinooks; the Salishans represented by several smaller bands on the north side of the Willapah Bay, all roughly classing themselves as Lower Chehalis, and a little band called the [504] Kwalhioquas, representatives of the Athapascan family, inhabiting the coast range between the head of the Willapah and the Chehalis River; that none of the Kwalhioquas are surviving; that but three were left in 1850 but are represented in small fractions of blood among others; the Lower Chehalis, the Westport band, which was the place from which the Chehalis came, were closely affiliated with the Shoalwater Bays, that is, with the Salishans and other larger and smaller bands, like the Whiskahs, Humptulips; that he went from the Shoalwater Bay Group to the Gray's Harbor when beginning to testify about the Chehalis Indians, Lower Chehalis; that the Satsops were the easternmost of the Lower Chehalis, with a dialect sufficiently different from the rest of the Lower Chehalis to make conversation between them difficult though understandable; that he, himself, speaks the Chehalis tongue somewhat; that his vocabulary is not large but he can carry on a conversation with them;

That since his acquaintance with them the Indians surviving around Shoalwater Bay itself do not regard themselves as having any separate tribal organization, having lapsed prior to his (the witness) personal ac-

quaintance with them, they are survivors of the Chinooks, Willapahs, Shoalwater Bay bands of the Lower Chehalis, and then some have drifted in from Clatsops, and one or two from up the Columbia River; it was long after tribal affiliation ceased and they just affiliated in a general way with a general *bundh* of Indians in Willapah Bay;

That so far back as he can remember the relations of the Indians living around Shoalwater Bay with the Indians about Quinaielt, have been the intermarrying, even as to the persons of high rank, intermarrying back and forth along the Coast; that north of the Quinaielts are the [505] Quileutes, of entirely different family and of traditional hostility and they have not mixed so much;

That as to the Indians around the Gray's Harbor, they have mixed with the Indians more or less along up and down that part of the coast; that they have fished together up and down the coast at all coast fishing points, but possibly, of course, where there is the heaviest industry; the Columbia River for the salmon; lesser degrees in Willapah Bay, Gray's Harbor and Quinaielt; in oystering on Willapah Bay; that the oyster beds have been worked since 1851 or 1852, from what he has learned, as a commercial proposition and as an article of diet of the Indians, since time immemorial;

That he understands the term "fish-eating" Indians of the Pacific Coast and that it means "one whose diet is largely or predominantly the fish that are gathered either from the open sea or coastal streams"; that "of the Pacific Coast" he understands to mean

"anywhere from Cape Flattery to the Columbia River—the mouth of the Columbia River";

That at his first acquaintance with the Indians they considered themselves as being in a general way, or as a general bunch or aggregation under the authority of the Quinaielt Agency, and the Agency in years back, did in point of fact, exercise police supervision and authority over the Indians, at least as far south as his home in Bay Center, citing as a particular instance, a homicide case some 45 years ago, there being an uncertainty as to whether it was homicide or accidental or intentional, a relative of the deceased took it upon himself to investigate and wreak vengeance; the Quinaielt Agency called all parties concerned together and decided they had insufficient evidence to act as to the homicide and the personal avenger—they impressed upon the avenger that he must go back home [506] and dismiss such thoughts from his mind;

Also in a triangle case, the Quinaielt Agency sent a representative down for the man, an old Indian who had tired of his wife, and took the woman to the Agency, and impressed upon them the necessity of living up to the laws in such cases;

That he was in court when H. H. Johnson testified and heard, he supposes, most of the evidence; that he heard Mr. Johnson's testimony that the tribes and bands around Shoalwater Bay were always considered, during his station at the Agency, as part of the Quinaielt Agency, and that he (the Witness) believes that was their understanding; that he met Mr. H. H. Johnson on various trips when the latter was down there on errands; that one instance in particular was

the case of an old Indian who did not want to accept his allotment, which had to be given to him in some one's else care; that the Indians seemed confused as to whether they were required to live on the reservation and did not want to go and live on the reservation for the reasons they stated there was not enough room for them to make a living, being only a narrow harbor and much timberland, and they would not have anything to do. That he does not remember ever having heard Mr. Johnson tell them, or any of them that they would not be required to live on the reservation, but knows that that was their understanding of it, as a body;

Q. Do you understand the meaning of the term "fish-eating Indians of the Pacific Coast"?

A. Yes.

Q. And what do you understand that term to mean?

A. One whose diet is largely or predominantly the fish that are gathered either from open sea or coastal streams. [507]

Q. "Of the Pacific Coast"—how do you define that with reference to the State of Washington?

A. Why, it would be anywhere from Cape Flattery to the Columbia River.

Q. That is on the Columbia River?

A. The mouth of the Columbia River.

That he knows the Barichio and Petit's family; knew Mr. Petit's father and mother before they were married; knew Barichio's mother and father before they were married, and has known their families ever since; that he believes the grandmother, Elizabeth Springer, as to the original ancestry, he thinks, was Shoalwater Bay, with ancestry from two or three different bands around Willapah Bay; as to Lower

Chehalis blood, that the north part of Shoalwater Bay belonged to the Lower Chehalis; that the grandmother's Indian name was, he thinks, "Ahh-Ahlah"; that she was a full-blooded Indian;

Speaking of the Barichio family, that the father of her children was a man named Barichio, a white man—an Italian, but now her husband is a man named Springer;

That Elizabeth Springer's children, were Ellen, Emma, Lena, Tanio, Frank, John, and Mary Springer, as far as known to him; that Frank is living and allotted on the Quinaielt reservation; that John and Lena are allotted on the Quinaielt reservation; that Mary, one of Ahh Ahlah's daughters also, was married to an Indian named Franklin, but she died about 40 years or so ago; that she had one son Henry, who was allotted on the Quinaielt reservation; that Tanino, another of Ahh Ahlah's daughters died before allotments were made, but that she was married to Archie Pellard; that he understands Archie Pellard is a plaintiff in one of these cases; that he believes Ellen Springer is dead, and is not clear whether she was allotted; [508]

That Frank Barichio married Lena Givens, reputed to have some unknown degree of Indian blood in her, but mostly white, that they had three children, Dewey, Mary and Lena; that Dewey and Mary, he understands, are plaintiffs in a suit herein;

That the said Dewey Barichio is married to Lavina Wilson, an Indian woman, allotted on the Quinaielt reservation; that the father of Dewey is an Indian, and Lavina Wilson is an Indian; that they have three children; Andrew Bammert Barichio, the second a

girl, Sister Alta, and the third he does not know the name of—a small child; he has no information as to whether these three children are plaintiffs herein;

That he knows Mary Barichio, married to Paul Petit, allotted on the Quinaielt reservation; that he understands that Mary Barichio is one of the plaintiffs in one of these suits; that they have two children, a boy Norris, and one they call Ellis, or Buddy; that he understands they also are plaintiffs in a suit herein;

That Lena, married to William Calhoun, is the great-aunt of Dewey and Mary Barichio; that William Calhoun is an Indian and is allotted on the Quinaielt reservation; that they have four children, being, in the order of their ages, Sampson, Edwin (or Edward) Tanina, called Nina, and Rose, or (Rosebud); that they are Indians allotted on the Quinaielt reservation;

That Ellen Amelia Barichio had a large family; that he knows some of them; that on long study he might dig up from recollection whether they were allotted anywhere.

That he knows Oscar Brignone (plaintiff in 320-E); that Oscar is the son of Joseph and Matilde Brignone; that Joseph Brignone, who died a few years ago, was an Indian, [509] but does not know whether he was allotted anywhere; that Joseph Brignone had several brothers and sisters of full-blood and of half blood; a brother, Anton, was still living a year ago, but he does not know whether he was allotted anywhere; that he cannot recall definitely the names of the sisters, one, he feels might be Rose; that the father of Oscar Brignone was a man

by the name of Brignone, who lives on the Columbia River, and his mother, was Ellen, the daughter of Ahh Ahlah; that Ellen was married to a man named Amelia; that it comes to him that she was allotted under the misuse of the name Springer, Ellen Amelia Springer; that Ellen Amelia's mother was Ahh Ahlah, or Elizabeth Barichio, first, and then Elizabeth Springer; Springer was Ellen Amelia's stepfather; that Ahh Ahlah was the mother of Frank Barichio, the old Indian to whom the others, except Brignone, trace their origin; that Elizabeth Springer is the one from they have descended.

That, as he previously testified, Paul Petit is the father of Norris A. and Ellis Petit, and their mother is Mary Barichio Petit; that Paul Petit is an Indian allotted on the Quinaielt reservation; that Paul Petit's father was an Indian called Jimmy; that he did not know whether this Jimmy was allotted; that Paul Petit's mother's name was Ida Strong Petit, an Indian, but he does not know if she was allotted anywhere;

Admitted by the Government and agreed that Jimmy and Ida Strong Petit, father and mother of Paul Petit, are allotted.

TESTIMONY OF L. L. BUSH ON CROSS EXAMINATION.

L. L. BUSH testified that he lives at Bay Center; that originally it was usually the home of the bands of the Chinook Indians, but the boundary between the Chinooks [510] on the south and the Lower Chehalis varied somewhat back and forth; that from what he knows the tribes of Indians who lived there originally were some of the Chinooks from time to time,

and some of the Shoalwater Bay bands from the Lower Chehalis from time to time, and some who were part of the Snohomish, or Willapah blood, and others who occasionally drifted in; that is all, that there was no tribal organization for some years even before his personal acquaintance with them; that of the plaintiffs known to him herein, the ancestry is scattered around; that he does not know whether he is acquainted with any Indian whose ancestry goes back to any one single band or tribe; that these Indians who have inhabited Shoalwater Bay have all disintegrated and parted—tribes originally there, like the Chinooks are no longer there; in the last few years they formed a business organization, but no tribal organization has been maintained by them for many decades; that he cannot recall that any of the Indians of that neighborhood attended any of the meetings of the organization of the Chinook tribe, except as spectators like himself, not as participants; that so far as he knows, none of the plaintiffs as named to him, attended a meeting of the Chinooks as participants, and he was there part of the time looking on.

That the Willapah tribe of Indians have disintegrated and passed on so much so that nobody left has more than a quarter-blood of that tribe, if that much; that he can remember no meeting of the Willapah tribe ever having held; that as regards the ancestry of any of the families mentioned by him, coming from the Lower Chehalis tribe of Indians, that in the case of Mrs. Walkowsky, while she was brought up by a foster mother at Bay Center, he believes her mother a Wynooche; that this Ahh Ahlah

mentioned, is the ancestor, [511] some Shoalwater Bay, some Willapa, some Chinook, does not know what fraction, her English name being Elizabeth Springer; that she did not hold herself as belonging to any of these tribes, just the general aggregation of Shoalwater Bay, having headquarters at Quinaielt; that is not to any local organization; as regards the Quinaielt Indians, the Agency for the Quinaielt Indians had headquarters at various places from time to time; sometimes at Olympia, usually at Quinaielt, but also sometimes as the Government would change the organization, the Agency would be moved here and there, at the times specifically mentioned regarding police supervision, the Agency was at Quinaielt, or Taholah, the Quinaielt reserve, in the first instance 45 or 46 years ago; that the Indians all over the State spoke of the place of the headquarters as the Quinaielt; whether authoritative agency or local organization, it was alluded to as Quinaielt; that it is his impression that the arrangements by the Government consolidated some things and put the main agency at Cushman School, Tacoma, but it was after that and it was his impression the real authority was at Quinaielt; that he does not date the agencies clearly as in some instances he was only a boy, but the names of Milroy, Wood, Henry, Willoby, Eals, are all in his mind as having more or less exercised authority at Quinaielt; that in those early days, three or four decades back, he heard no mention of anything except Quinaielt as headquarters, except that it is his recollection that a Mr. Eals was always regarded as authority for any opinion, but the only location he heard referred to he believes was Quinaielt;

That he presumes he did state that the Indians around Willapah Harbor (Bay) and Shoalwater Bay migrated for fishing purposes on the Columbia River, that they did go back [512] and forth up and down the Coast;

That so far as he recalls, only one adult, Dewey Barichio, is named among the plaintiffs herein mentioned by him as going down to fish; that he and the mothers and fathers and husbands of such plaintiffs do now leave their homes and go South and fish on the Columbia River at seasons, and sometimes pelagic trolling (open sea trolling); that there are white fishermen in that district; that the only difference between the Indian and white fishermen is that that the Indian is more apt to be exclusively fisherman, while the white man is more apt to be a fisherman on the side; that these plaintiffs fish the same as the white people do, up and down the Columbia, except that some of them have gone occasionally up to the Quinaielt, not in large numbers for there are small streams, but they occasionally go to the Quinaielt and he knows of no white man who goes there or has gone there to fish, nor does he recall any white people who have gone up that way sea-otter shooting.

That he has lived in that vicinity approximately 50 years; that the land held there is taxable land, returns taxes to the County and State, speaking of the land at Bay Center; that there is the little reserve at Georgetown, (not on the Bay Center side) that is not State held land, but in the main, except the territory involved in these matters, the property is taxable land; that the land in his territory has been taxable

land for something like three-quarters of a century, at various periods as far back as the 50's of the last century it has been taxed land—some of it, that is, the first few tribes who occupied it dated back that far.

That as regards their history before his recollection [513] he used to talk over with them their myths and legends sometimes; that before his time he understands they took their furs to market at Astoria, Oregon.

(On interrogation by the Court); that even back before his first contact with them, local or traveling buyers, mostly from Portland came in there and bought the furs locally; that he could hardly imagine any Indian tribe that did not use the fur of the bear, beaver and otter; that he does not know what the Upper Chehalis had to sell; they came down Willapah Harbor way and he was in Willapah Bay; that he understands their market was down in Gray's Harbor, the villages that started at Gray's Harbor, Montesano and Elma, after the white settlement and before the white settlement there, he understood their furs were collected by traveling traders that went up through the Cowlitz Valley; that so far as he had heard mentioned; tribal affiliation was more with the Lower Chehalis than the Cowlitz;

That he is not aware that the Interior Indians had either to find a market interior or had to sell through the Indians or Indian organization or tribe that held the mouth of the river, the end of the trail on salt water, except a tribe which belonged to the same Athapascan family with the Kwalhioquas up between Willapah and the Chehalis; they had formerly been

in the upper waters of the Chehalis, settled on the Oregon side and were more savage and exacting in taking tribute; that he never heard of the Upper Chehalis Indians trading furs at Astoria, going down by the ocean, outside; that they did not go outside with their canoes for traffic purposes, only for hunting purposes as a rule; that he has also understood that the Upper Chehalis did not hunt for sea otter outside the Upper Chehalis, but believes the witness who previously so stated, has forgotten [514] several instances; that he could not say that the said witness who so testified was right as a general proposition that the Upper Chehalis did not go outside to hunt sea-otter; that sea-otter hunting did not take a large number of people; that as a general rule the Upper Chehalis did not, as his impression is, that ocean-going canoes were made as far up the river as that.

W. B. SAMS RECALLED—TESTIMONY ON DIRECT EXAMINATION.

That in his previous testimony that there had been legislation passed prohibiting the Chehalis and other tribes of Indians from suing for damages sustained from the United States or other Indian tribes, he was referring to suit in the Court of Claims and was referring to the Act of February 12, 1925; that act authorized claims to be brought by the Indians who signed the Medicine Creek Treaty, the Point Elliott Treaty, the Quinaielts, the Mukleshoots, the San Juan Islands, the Nooksaks, Chinooks, Upper and Lower Chehalis, Humptulips, or any of them, and many of the Indians provided for in that Treaty were Indians who had received allotments of land;

The Treaty further provided that if any of them had received allotments of land, the Government might counter-claim anything which would be recovered under this Act, might counter-claim what they received for the allotments of land; the Quinaielts, who had received a reservation, were mentioned; that he does not know 'at long distance' of another act which extends that kind of remedial legislation to all tribes of the United States; that he is not familiar with anything but this case; that the signature exhibited to him is his. [515]

Plaintiff's Exhibit No. 13, letter written by Mr. Sams to Stuart H. Elliott, January 20, 1925, admitted in evidence.

That since that letter was written he has had evidence that the wife of Paul Petit has *avery* small degree of Indian blood. [516]

Case of ARCHIE PELLARD, Cause No. 306-E.

TESTIMONY OF ALLEN CHINOIS FOR THE PLAINTIFF.

ALLEN CHINOIS, being sworn, testified, that he lives on Chinois Creek below Hoquiam; that he is a full-blooded Indian allotted on the Quinaielt reservation; that he knows Archie Pellard well enough, had always been with him; that he is an Indian of half-blood; that he has known him all his life; that he recognizes him as being an Indian entitled to rights on the Quinaielt reservation; that Archie has associated and affiliated with the Indians of the Quinaielt reservation; that in 1914, 1915, 1916 and 1917 he was over *ther* at

Taholah building boats for the Indians; that he fished the Quinaielt river in 1914 and 1915; that Archie Pellar has a sister, Adeline, allotted on the reservation; that he has possibly six or seven nieces there; that he has other relatives; that he (the witness) cannot prove that he is related to Archie Pellard in any way; that Archie Pellard stayed with Johnson Wauketas, but does not know if they are related; that Archie Pellard was married to a half-breed woman, who is now dead; that Archie Pellard was associated with the baseball team at Taholah for Indian boys in 1915, 1916, 1917, and in 1922 and 1923; that Harry Shale managed it the first season; that Robert Sampson was another one of the officers; that Archie Pellard had no children; that Archie Pellard came from Bay Center; that his mother was a full-blooded Indian; that his father (Archie Pellard's) was a Frenchman; that Archie's mother's name was Ellen; that Archie Pellard had a pile driver or hand driver on the Quinaielt fishing locations working for the other Indians there. [517]

TESTIMONY OF ALLEN CHINOIS ON CROSS EXAMINATION.

That so far as he knows Archie Pellard was never excluded from the reservation by action of the tribe; that he does not know of Archie Pellard ever having trouble with the Indians of the reservation with regard to fishing; but that he has been closely associated with him all the time.

L. L. BUSH, RECALLED AS WITNESS FOR PLAINTIFF.

L. L. BUSH, being sworn, testified that he knows Archie Pellard and that he is an Indian of half-blood degree; that he knew Archie Pellard's mother, who was a full blood Indian; that he has a faint recollection that Archie's grandmother was born somewhere within the Lower Chehalis territory; that she married and moved or was married over at Chinook and that Archie's mother, Ellen, was born there, or perhaps taken there when very young; that when he first knew Ellen, Archie Pellard's mother, she moved into Bay Center about 35 or 40 years ago; that he has known Archie for that period of time; that Archie has been sometimes a fisherman, sometimes painting, sometimes boat building; that he is generally looked upon as an Indian of the aggregation of the remnants composed of the Indians in Willapah Bay and having affiliation quarters at Quinaielt; that he knew Archie Pellard's sister, Adelaide Lohre, recently deceased; that she lived at Bay Center for a good many years and then in British Columbia for a while, then at Bay Center again, and of recent years on the Quinaielt reservation; that Adelaide Lohre was allotted on the Quinaielt reservation;

That Archie Pellard was married to Tanina, the youngest daughter of Elizabeth Springer, the sister of Frank [518] Barichio; that she, Elizabeth Springer, was an Indian; that she was not allotted, having died some twenty odd years ago.

CLEVELAND JACKSON RECALLED AS WITNESS FOR PLAINTIFF.

CLEVELAND JACKSON, being sworn, testified that he is an Indian of the Quinaielt tribe; that he knows and had known Archie Pellard for 12 or 14 years; that he has always considered Archie Pellard an Indian, but does not know what degree of blood; that as nearly as he can say, Archie Pellard belongs to the Shoalwater Bay tribe or band; that when he first knew Archie Pellard he came to Taholah on the Quinaielt reservation, that was about 1914, fishing, building boats for Indian fishermen; that he managed the Indian baseball team in 1915, 1916, 1922 and 1923, the baseball team composed of Indian players from the Quinaielt reservation and some from Shoalwater Bay and some from Quileute; that the name of the team was the Taholah Indian Baseball Club; that Archie Pellard would play the oldtime fiddle at the dances any time they could get him to, he was just a fiddler, not a violin player, but not different from the ordinary fiddler, any Indians that happened to be there went to the dances he played at, but mostly Quinaielts; some held at the schoolhouse, some at the residences at Taholah; that he never saw Archie Pellard's mother and knows nothing of his ancestry; that he thinks he had a brother, knew his sister, Adeline Lohre, who was allotted on the Quinaielt reservation and some of Archie's nieces who lived on the Quinaielt reservation; that he himself has lived on the reservation; that he always considered Archie Pellard as anyone of Indian blood considers an Indian; [518-A] that outside any one of any degree of Indian blood is considered by the white

man as an Indian, and on the reservation he is considered a white man, if he has a small degree of white blood, just reverses the condition; as long as he has known Archie Pellard he has associated with the Indians; that he has never heard of Archie Pellard having an allotment on the reservation, and has heard no objection to him on the reservation.

TESTIMONY OF CLEVELAND JACKSON ON CROSS EXAMINATION.

That he never heard of any trouble Archie Pellard had on the reservation in 1917; that he considers an Indian any person with Indian blood; that most of them must have belonged to some tribe; that he just stated that as near as he can say, Archie Pellard belonged to Shoalwater Bay, because that is where he has known him to come from; that had Archie Pellard belonged to some other tribe he would have known it.

TESTIMONY OF CLEVELAND JACKSON ON REDIRECT EXAMINATION.

That he knows a full-blooded Indian named Humptulip Jimmy; that he lives on the Quinaielt reservation and as nearly as he knows, this man belongs part to the Upper Chehalis and Part Humptulip, that he talked what is known as the Upper Chehalis language and also what is known as Gray's Harbor; he is dead; that this Humptulip was considered a good fisherman and one of the best sea-otter hunters; that as regards the eating of salmon by the Indians on the Quinaielt there are salmon in the streams at all

times of the year, some kind of salmon, a complete cycle, sometimes more than others, five or six different kinds run in the river, when one lapses another runs in; that in [519] the old days the Indians lived on smelts, not necessarily from the ocean, silvers from the ocean, and Columbia River, or "candle-fish" from the mouth of the River and farther up; that he could not say as to any other streams in which the salmon run all the year round.

TESTIMONY OF HARRY SHALE FOR THE PLAINTIFFS.

HARRY SHALE, being sworn, testified that he is an Indian allotted and enrolled on the Quinaielt reservation; that he is well acquainted with Archie Pellard having known him since somewhere in 1914; has associated with him; does not know what degree Indian blood Archie Pellard is, but knows that he is mixed blood and he regards him as an Indian; that Archie Pellard has always associated with the Quinaielts; that taking the Court's given definition of "affiliate" as being from the word "Brother," he does not know that he can say that Archie is a brother; that as an Indian he has mixed in there and lived with the Indians off and on since the year he got acquainted with him; that he cannot say how the other Indians living on the Quinaielt reservation feel toward and treat him; that he and Archie Pellard have always treated each other like gentlemen.

TESTIMONY OF HARRY SHALE ON CROSS EXAMINATION.

That he cannot very well say he considers Archie Pellard a member of the Quinaielt tribe; that he takes him as a Bay Center man; fished with him a year or two, lived across where the witness lived; as to tribal membership, Archie Pellard told him he is from Bay Center; as to Archie Pellard's old people he knows nothing, being well acquainted with Archie Pellard only; that Archie Pellard has not grown up as a Quinaielt Indian or as a member of the Quinaielt [520] tribe of Indians;

That he (the witness) is one of the head men of the Quinaielt tribe and knows the men of that tribe; that as regards Archie Pellard growing up as a member of that tribe; he (the witness) never knew him until 1914; that Archie Pellard built a couple of boats for him and fished a couple of years with the Petit boys, and lived across from where he (the witness) is now living;

That perhaps Archie Pellard has been present at some of the tribal meetings recently, but does not know that he had any voice in the meetings, but has been present in different meetings; that Archie came from Shoalwater Bay; that he knows nothing of other tribes of Indians living around Shoalwater Bay as he is not familiar with the people around there.

Archie Pellard being stone deaf, Affidavit as to his testimony is submitted for use in Cases No. 320-E; 321-E; 306-E and 307-E.

By agreement of counsel, statement, with the exception of three lines, thereupon eliminated by

counsel for plaintiff, is offered in evidence and as Plaintiff's Exhibit No. 14, is admitted.

AFFIDAVIT OF ARCHIE PELLARD.

"That he is the plaintiff above named; that he is totally deaf and unable to hear or distinguish sounds; that he can read lips to a slight extent but not in a very reliable way and will be wholly unable to testify excepting in answer to written interrogatories which he can read and write the answers to;

That his mother was *Wllen* Pellard and she was a full blood Indian woman who was reared and lived all her life at Bay Center, Washington; that she died about 27 years ago, prior to any allotments upon the Quinaielt reservation; [521], that his mother had another child, Adeline Lohre, who died about a year ago and who was allotted upon the Quinaielt reservation, and that said Adeline Lohre had seven children all of whom were allotted on the Quinaielt reservation;

That all his life he has lived in the immediate neighborhood of the Pacific Ocean from the mouth of the Columbia River to the Quinaielt reservation; that all his life he has followed the occupation of a fisherman and still follows it; that in the year 1911 he removed to the Quinaielt reservation at Taholah and lived there for a number of years, making frequent trips to the fishing grounds in Gray's Harbor and Bay Center and other places along the Coast and returning to the Quinaielt reservation and fishing in the river there; that he has constantly associated and affiliated with the Indians on the Quinaielt reservation and is known to virtu-

ally all of them; for some years he was manager of the Quinaielt Indian baseball team composed of Indians on the Quinaielt reservation and as late as the year 1925 was manager of said team, and Robert Sampson, a full blood Quinaielt Indian allotted on the reservation was the treasurer of this organization;

That some years ago he was engaged in improving the fishing locations along the Quinaielt River driving stakes and piles into the river so that he and the other Quinaielt Indians could string their nets into the river for fishing therein; that this work was gratuitous and he never received any pay for it; that the lumber used was purchased from the Indians and the only funds he received were for the purpose of reimbursing him for the payment for the lumber and the actual expense in connection with the use of the pile driver;

That all his life he has constantly associated and affiliated with the Indians who now live on the Quinaielt [522] river who have come down to Bay Center and the various fisheries along the Pacific Coast and he has associated with them there and has fished with them at these places and also on the Quinaielt reservation. That to his knowledge no Indian of the Quinaielt reservation has ever questioned his right as a Quinaielt Indian, and all of them to whom he has talked have assured him that he is one of them and entitled to his rights on this reservation; that no Indian official of the Quinaielt reservation has ever denied him the right to go upon the reservation, to live there, or to use the fisheries of that place;

That he has never received an allotment of land upon any reservation or upon the public domain; that he has attended such tribal councils as have been held in recent years and has voted at such councils with the full approval and consent of the other Quinaielt Indians;

That he was married to an Indian woman named Tenino Barichio who is now deceased, she was the sister of Frank Barichio who is now living and is allotted upon the Quinaielt reservation. Her entire family were Quinaielt Indians and allotted upon the Quinaielt reservation; that his father was a Hudson Bay trapper and Voyager who came from Canada in the early days with the Hudson Bay Company. He was a French Canadian and he thinks had some Indian blood as most of these French Canadian Hudsons Bay men had.

His sister Adeline Lohre, a Quinaielt allottee, was married to a Quinaielt Indian who was allotted on the Quinaielt reservation. He had one brother named Henry Peers, now deceased, who was married to Julia Ducheney who died long ago but who was the sister of Agnes Elliott, also allotted on the Quinaielt reservation, as were all of her children.

The small tribe of Indians living on the Quinaielt [523] reservation, those living at Gray's Harbor, and those living at Shoalwater Bay, all speaking the same language, are all intermarried and interrelated and when he was a young man growing up in this county they would live part of the time on the Quinaielt reservation, part of the time on Gray's Harbor near Westport and part of the time at Shoalwater Bay where Bay Center and South Bend now

are. No distinction was drawn between the various tribes at that time, they were all one people."

Pellard case closed.

Reverting to Cases Nos. 320-E; 321-E.

TESTIMONY OF FRANK BARICHIO FOR PLAINTIFFS.

FRANK BARICHIO, being sworn, testified that he is past 60 or 65 years old and lives at Bay Center; that he is an Indian allotted on the Quinaielt reservation; that so far as he knows he was never adopted in the Quinaielt tribe; that he is married and has two children, Dewey and Mary Barichio, both plaintiffs in the action; that his daughter Mary is married to Paul Petit, an Indian; that Paul Petit's father and mother were Indians; that his son, Dewey Barichio, is married to an Indian, Lavina Wilson; that she is allotted on the Quinaielt reservation;

That his son Dewey and his wife, Lavina, have three children, Lamber, Leda and Romney; that the Petit's have two children, Norris and Ellis; that his (the witness) mother was a full blooded Indian allotted on the Quinaielt reservation; that his father was a white man;

Admitted by the Government that the families of the Barichios' and Petits' as outlined by L. L. Bush, in previous testimony, is correct, they are people of part Indian blood. [524]

TESTIMONY OF PAUL PETIT FOR PLAINTIFFS.

PAUL PETIT, being sworn, testified that he heard the testimony of L. L. Bush the day before as to the Petit family tree and relations, and that he agrees with him in that testimony.

TESTIMONY OF DEWEY BARICHIO FOR PLAINTIFFS.

DEWEY BARICHIO, being sworn, testified that the testimony as he heard it given by Mr. Bush regarding the Barichio family history is right.

TESTIMONY OF MARY BARICHIO PETIT FOR PLAINTIFFS.

MARY BARICHIO PETIT, being sworn, testified that she is not allotted on the reservation; that she is suing for allotment; that the testimony of Mr. Bush as he gave it regarding her family history is correct.

TESTIMONY OF LAVINA WILSON BARICHIO.

LAVINA WILSON BARICHIO, being sworn, testified that she agreed with what Mr. Bush said with reference to her family tree and relationship.

TESTIMONY OF FRANK BARICHIO FOR PLAINTIFFS.

FRANK BARICHIO, being sworn, testified that he has always lived down there as an Indian, as has his family; that he lives in Bay Center in an Indian

community; that some white people live around him, but it is the old accustomed place where Indians live; that he fishes for a living, but at present is keeping store; that Dewey Barichio and Paul Petit are fishermen; that he fished some in the Columbia River, but never went north of Shoalwater Bay; that quite a few Indians other than from Shoalwater Bay fish there, [525] Quinaielts and from different parts, quite a few the last summer; that some Indians from Shoalwater Bay go north to fish and he thinks some go to the Quinaielt reservation to fish; that fish and clams is the main diet of the Indians.

TESTIMONY OF FRANK BARICHIO ON CROSS EXAMINATION.

That he belongs to the Quinaielt Indians; that his father has always belonged to that tribe of Indians; that he was born in Wahkiakum County on the Columbia River; that his mother came from Shoalwater Bay and went down on the Columbia River; that he lived on the Columbia River for about 23 years; now lives at Bay Center; that there was no town where he lived on the Columbia in Wahkiakum County; he was born there and lived there 23 years; that while he was up there he was not then in any contact with the tribal organization; that he never attended any tribal meeting; that he never participated in any decision as to the business of the tribe; that now he is suing for some of his children who were born in Bay Center; that a couple of years ago they were on the Quinaielt reservation for a week and stayed at Taholah; that was the time he went up seeking information about his allotments;

does not remember but thinks they were there once before.

TESTIMONY OF PAUL PETIT FOR PLAINTIFFS.

PAUL PETIT, being sworn, testified that he is allotted on the Quinaielt reservation; that he lived on the reservation in 1915 and 1916 and was fishing in the Quinaielt River; had a fishing location there, on which he was given permission by Mr. Garber, the Indian Agent, to fish; that he had to clear it out as it was full of stumps and snags; the Indians on the reservation set nets; that Mary Barichio is his [526] wife and that she was on the Quinaielt reservation before they were married in 1915; that she stopped with Joe Brignone in 1915 while he was fishing at Quinaielt; that he played ball with them and worked for them on the Taholah Indians, which was the name of the baseball team as he knew it; that he cannot recall the name of the club; The Taholah Indians was all he ever heard them called; all on the team were Indians from around Taholah village; does not what other affiliation he has had with the Quinaielt Indians, has been there to fish, run in with boats several times; that fishing has been his occupation since 1913, boating and oystering, all his life; that there has been intermingling between the Indians on the north part of Gray's Harbor and the Indians in Bay Center in that each summer the seining crew on the Columbia River was attended mostly from the Indians of the North Quinaielt, Oakville and all along the Coast; that no Bay Center fishermen worked on the Columbia River; that mostly

the boys own their own boats and fish for themselves; that George Charley has been in there the last four or five years and from what his father told him that has been going on since he was a boy; that he knows George Charley, one of the witnesses.

TESTIMONY OF PAUL PETIT ON CROSS EXAMINATION.

That he was born at Bay Center and has lived there practically all his life; that Norris, his son, was born in Seattle, and the other at Bay Center; that Oscar Brignone was born in Bay Center; that he is bringing suit for Mary Petit and Norris and Ellis and Oscar Brignone; that he never lived on the reservation and the children have not been down except on a visit; that he has been at the council meetings on the Quinaielt reservation several times, once [527] in 1926, he had no voice in the meeting but went down with the boys, that was in 1926; he had no *vice* because he was a young fellow and the older people called the meeting; that he could not say what the meeting was for; that he is 37 years old; that in a way he has participated in the business of a meeting; that year or so ago at the request of Mr. Sams he acted as secretary temporarily for a meeting at South Bend.

TESTIMONY OF PAUL PETIT ON REDIRECT EXAMINATION.

That he never lived in Seattle; that his wife was here when his child was born and she remained two weeks and then they took him (the baby) home; that his mother lives in Seattle; that she went to his mar-

ried brother's home in Seattle at the time the child was born and remained two weeks and then returned to Bay Center.

TESTIMONY OF PAUL PETIT RECALLED—DIRECT EXAMINATION.

PAUL PETIT, being sworn, testified that he knows Oscar Brignone; that he is 12 or 13 years old; lives at Bay Center with his mother Tillie Reischman, who is related to Paul Petit's wife; that Oscar Brignone lives near him and his family; that he is an Indian.

Plaintiffs rest in Causes No. 306-E; 320-E and 321-E. [528]

Case of ROSE PICKERNOLL, MABEL PEERS WHITE and AMELIA PEERS ALDEN, Cause No. 307-E.

TESTIMONY OF MABLE PEERS WHITE FOR PLAINTIFFS.

MABLE PEERS WHITE, being sworn, testified that she is an Indian, sister of Rose Peers Pickernoll, and Amelia Peers Alden, co-plaintiffs with her in this cause; that Amelia Peers Alden lives in Dahlia, Washington, that she cannot come to Court as she is an invalid; that Mrs. Pickernoll is present; that her father was Henry Peers, an Indian; that he is dead; that her mother was Judith Ducheney, and she was an Indian, now dead; that her grandmother on her mother's side was Ellen Pellard, an Indian, a full-blooded Indian; that her grandmother on her father's side was Ellen Pellard; that her mother's

mother was Mary Ducheney, an Indian, and the mother of Agnes Elliott and the grandmother of the older Elliott men who were in Court, grandmother of William and Joe and those boys;

That Ellen Pellard had three children, her father, Henry Peers, Adeline Lohre, now dead and who was allotted on the Quinaielt reservation; and Archie Pellard, one of the plaintiffs in one of the cases just being tried; that he is her half-uncle; that she was born at Dahlia and now lives at Puyallup, Washington; lived in Dahlia 30 years; went to a Government Indian school in Oregon for a while; that her sister and brother and cousin, Joe Elliott and some nieces and nephews attended that school; (Did not give the name of the school in response to inquiry); that it was the nearest Government school, a boarding school which no one attended except Indians; they would not admit any but Indians to the school.

Adeline Lohre's children were allotted on the [529] Quinaielt reservation; they are her first cousins, the children of Adeline Lohre—Daisy Borg, Francis Payne, Marie Ross and Cora Walters, Eleanor Chenois and some others; that they live on the Quinaielt reservation; that she has visited them but not very often; that Adeline Lohre had prior to her death visited her quite often, they are her first cousins on her father's side, and the Elliotts are her cousins on her mother's side, Joe, William and Charles; that Agnes Elliott is her aunt and she was also allotted.

That she has since she can remember associated and affiliated with the people just above named and the other Indians of the Quinaielt reservation; that

she considers herself a member of the Quinaielt tribe; that she is now married to a white man.

TESTIMONY OF MABLE PEERS WHITE ON CROSS EXAMINATION.

MABLE PEERS WHITE testified that she has been married twice, both times to white men, and now lives at Puyallup and that it has been 10 or 12 years since she lived at Dahlia; that her people live at Dahlia and they are Quinaielt Indians, but mostly the Quinaielts living at Dahlia are composed of her people, that Dahlia is principally composed of members of her family and relations; that she never attended any tribal meetings of the Quinaielt Indians or any other tribe of Indians; that she was asked to go to Taholah to the meetings; that it was suggested that she attend the meetings by different members of the tribe, but she could not attend because she did not know when they were held.

TESTIMONY OF HENRY STRONG ON CROSS EXAMINATION.

That he knew Henry Peers and that he was an Indian; that he does not know where he came from; that he got [530] acquainted with him but Henry Peers was a great deal older than he; that he does not know if Henry Peers came from Canada, or British Columbia, that he is dead now and does not recall when he died, nor where, except up north somewhere, at a place he was fishing. (In response to the Court "by up north" he means "up toward Alaska."

TESTIMONY OF JOSEPHINE ELLIOTT FOR PLAINTIFFS.

JOSEPHINE ELLIOTT, being sworn, testified that she is an Indian, allotted on the Quinaielt reservation; that she knows Mable Peers White, Amelia Peers Alden, and Rose Peers Pickernoll, and has known them all her life; that they are Indians, and she supposes they belong to the Quinaielts, part Quinaielt; that she knew their father, Henry Peers, that he was an Indian; also their mother, who was an Indian; knew them at Dahlia and supposes they lived as Indians; that she has always known them and they have affiliated with Indians; that Rose Peers Pickernoll is married and lives at Dahlia; that Amelia Peers Alden lives at Dahlia; that she knew Ellen Pellard, who was a full-blooded Indian; that Ellen Pellard is the grandmother of these three Peers women; that their grandmothers on both mother's and father's side were Indians; that she knew Mary Ducheney, who claimed to be a Quinaielt;

That their father Henry Peers, had a brother Archie Pellard, and a sister, Adeline Lohre, that Adeline Lohre is her (the witness') mother, and she died last June; that Adeline Lohre is aunt to the three Peers women and that she lived at Taholah; that the Peers women, Rose Peers Pickernoll, Amelia Peers Alden and Mable Peers White associate with her and her husband, and they are both Indians, her husband being of the Quinaielt tribe; that she has known them intimately all her life and has always known them to associate [531] with the Indians.

Admitted by the Government that the testimony

of Joe Elliott will be the same as that of Josephine Elliott, next above;

Admitted that the family history of Rose Peers Pickernoll, would be given in testimony by herself, as given by two witnesses.

Plaintiffs rest in Cause No. 307-E.

CAUSE NO. 306-E, ARCHIE PELLARD.

TESTIMONY OF W. B. SAMS FOR DEFENDANT.

W. B. SAMS, being sworn, testified that he is the Indian Agent at Hoquiam; that he knows the plaintiff, Archie Pellard; that he has seen Archie Pellard around present during adoption meetings; that outside of the records he knows that Archie Pellard's sister, Adeline Lohre, came to him and wanted him to allow Archie to come back on the reservation.

TESTIMONY OF WILLIAM MASON FOR DEFENDANT.

WILLIAM MASON, being sworn, testified that he is the Chief of the Quinaielt tribe of Indians; that he knows Archie Pellard; that Archie Pellard is not a member of the Quinaielt tribe of Indians; that he is a Chinook and his mother was a Chinook; that he never saw Archie Pellard at any of the Quinaielt tribal councils.

TESTIMONY OF WILLIAM GARFIELD FOR DEFENDANT.

WILLIAM GARFIELD, being sworn, testified that he is one of the head men of the Quinaielt tribe of Indians, [532] that he knows Archie Pellard; does not consider him a member of the Quinaielt tribe, as

he is a Chinook; that he has not associated or affiliated with the Quinaielt tribe; does not know if he has ever been at any of the meetings; that he is a Chinook; that the people come and testify that they are Quinaielt Indians and he can get hundreds of witnesses from the Quinaielts and Quileutes and they will prove they know the Quinaielts, and that is the truth about it—that he has a copy of the Treaty in his house that does not mention "fish-eaters" but "bands of Indians" and that means Indians, not bands of white men—"you can tell when they are half breed or three quarter breed—furniture does not make a white man or make an Indian"; that it was Bay Center people who originally inhabited the Shoalwater Bay district; that of course they had a tribe, that was a way with Indians, Indians cannot go to other places, they were enemies; since the white people settled, that is the time the Indians travelled all over; that only the Chiefs bought girls from other tribes, not the common fellows, that is the way they live, on one place; that the Shoalwater Bay Indians have always lived there; that George Charley is their Chief; he is the Chief of the Bay Center people; that he is part Quinaielt on his mother's side; that sometimes the Chinooks went to the Shoalwater Bay and the Willapah Harbor tribe, but they are all dead, just a few Willapah Harbor Indians left, there used to be hundreds and hundreds when he was a boy.

On agreement of counsel, record is made to show that in all these cases being tried, prior to bringing the suits, all rules of the Department were complied with, with regard to furnishing to the Indian and Interior Departments and the

Allotting Agent, the necessary information as to [533] lineage and family trees. We supplied all the information we could and the whole facts were presented and every opportunity was given the Deparement to make these allotments without litigation.

On stipulation of counsel for plaintiffs and defendants, it is agreed that Chief Mason, Billy Garfield and Sampson Johns will testify to the same statement as the witness just preceding testified thereto, that they will deny that these persons in these cases involved in 321-E; 306-E; 307-E; 320-E, have affiliated with the Quinaielts and are not recognized as belonging to the Quinaielt tribe of Indians, deny association and affiliation with the Quinaielt tribe, even though allotted on the Quinaielt reservation. [534]

Case of MARY FRANCES PROVEO; LAURA M. BROWN; FRANK M. PROVEO; ROSA H. GARRARD; SARAH SPENCER; ISABELLE R. RAINEY; WILLIAM A. PROVOE; RAYMOND A. PROVEO. Docket No. 309-E.

TESTIMONY OF PIKE BENN, FOR THE PLAINTIFFS.

PIKE BENN, being sworn, testified that he is about 71 years of age and lives at Oakville, where he has lived all his life; that his father was Hotsu Benn and who died 25 years ago and told him when he died he was 115 years of age; that his father belonged to the Satsop tribe, one of the tribes of the Lower Chehalis; that he knows his father was present at the

meeting at Cosmopolis between Governor Stevens and the Indians of Southwestern Washington, for the purpose of negotiating a treaty with them; that his father told him he took Governor Stevens down the river to the council in 1855; that he is acquainted with the old Indians around Gray's Harbor and Quinaielt, and knows William Garfield, one of the headmen today of the Quinaielt reservation; that to him William Garfield is a young man; that William Garfield's father lived at Cosmopolis and his Boston name was John; that John belonged to the Gray's Harbor Indians and his wife belonged to the Quinaielts, the Gray's Harbor is sometimes called the Oyhoits, a branch of the Lower Chehalis.

That his (the witness) mother's name was Julia, a member of the Black River band of Indians; she died about 30 years ago in Cedarville in the Upper Chehalis Valley; that the Black River flows into the Chehalis at about Grand Mound; that he thinks his father had relatives among the Humptulips; that when he was young the Indians did not eat bread and sugar and coffee, but ate dried salmon. [535]

Q. Which is the principal article of diet, salmon?

A. Yes.

That they fished in the Chehalis River clear up to the Harbor; that their people went down to the Harbor to get fish and in the fall the salmon came up the river; that so long as he can remember, the Upper Chehalis tribe has fished at the mouth of the Chehalis River; that he has heard his father speak of fishing there before he can remember; that his father told him they used to get sturgeon and whale oil and once in a while catch sturgeon; that his father

used to sell beaver and other fur to the white men that came along the river and traded for furs; that in the early times his father said they caught mink and beaver and used the meat and dried the hide and treated it for the white people—the Englishmen from France; that he knows the Humptulips and thinks they just belong to the Humptulip tribe; he does not know about Taholah—that he knows every man in Taholah today.

That he knows Mary Francis Provoe, one of the plaintiffs; that she is not an Indian; that his mother came from Canada—the mother of the Provoe born on Cowlitz; that the father of Mary Francis Provoe was John Kindred, a white man; that her mother was Sallie, a full-blooded Indian from the Chehalis Black River to the Chehalis tribe; that Sallie's father was an Indian of the Black River tribe named KumKan; that Sallie's mother was Huckiwah, a full-blooded Indian from Black Creek next to Olympia, by the big lake; that Mary Francis Provoe is a half-breed Indian;

That Mary Francis Provoe married a man Provoe who came from Canada; he would not say but thinks he was part Indian, the husband of Mary was born at Cowlitz; that Mary Francis Provoe's mother had two children, one boy and one [536] girl, both dead; that one's name is Lafayette who has a claim at Taholah.

TESTIMONY OF PIKE BENN ON CROSS EXAMINATION.

That he knows the father of Mary Francis Provoe (the lady indicated to him); that he came from

Black Lake, belongs to Chehalis and is a full-blooded Indian, that her husband came from Canada; that there is no Nisqually blood in him—somebody dreamed that; that the Upper Chehalis live around Olympia, that now there are only white men there, all dead a long time ago, does not want to talk about the Nisqually Indians.

TESTIMONY OF PIKE BENN ON REDIRECT EXAMINATION.

That he thinks there are some Nisqually Indians down there, they used to be this side and they moved across the river and some of them are scattered around; that some Cowlitz *Indinas*—Upper Cowlitz live down at his own place and some are down at Mossy Rock, thinks there is a stream there and lots of Cowlitz people way up there.

TESTIMONY OF PIKE BENN ON RECROSS EXAMINATION.

That his father used to fish and sometimes catch some trout, but did not go to the woods to hunt; just went to the river and caught salmon, beaver, otter and mink, he used the fur to trade, we ate the beaver meat, ate them raw, caught the fish on the Chehalis River.

That he was born the year after his father went to the meeting at Cosmopolis with Governor Stephens; that all the Indians were called together, Cowlitz, Chinook, Bay Center, Quileute, Quinaielt and the Chehalis people went down there for three weeks and Governor Stephens told the [537] Indians that he would quit the meeting because all the Indians

did not sign the paper; that the Governor promised this Indian Chief if he signed the paper that they would have a big reservation in Taholah, Yakima—whichever way they wanted to go; that the Governor went home to Washington telling them he would send them a sawmill and a crush-mill that the Governor went home and I guess he sent them our mill down to old Tacoma; Well, now, Governor Stephens he went home and find a big war down there and got shot and didn't come home since that time he left Cosmopolis."

That he knew Sallie since he was a little fellow; that Sampson John's wife is Sallie's aunt; that Sallie died years ago—35 or 40 years ago; does not know where Sallie was born, that she lived at Rock River, Black River; that her husband's name was Dick; that he came from South Olympia; that he is a relative of Charlie Parsons; Charlie Parsons is from South Olympia, is a full-blooded Indian, and is Dick's uncle; that Dick was of the same tribe as he (the witness); that Dick has been dead a long time; that Dick was not a Frenchman, but a full-blooded Indian; that he does not know who Dick's father and mother were; that Dick was Old Sallie's second husband and they had no children; that Sallie's children were by her first husband and he does not know who they were; that he did not know her first husband, or who he was; that he had never seen him; that when he first knew old Sallie she had one girl and her husband had died and she married Dick afterwards; that her first husband was not a Frenchman but a full-blooded Indian; that he did not know him, but he saw his daughter Annie and she is a full-blooded

Indian and a full cousin to Amelia Sampson; testified repeatedly that Sallie had but one child, Annie, who died when she was about 30 and had no children. [538]

TESTIMONY OF PIKE BENN ON RE-RE-DIRECT EXAMINATION.

PIKE BENN testified that there was an old Indian named Kumkane and his wife Humquia and they had a daughter Sallie; that he was mistaken; that Sallie's sister was the mother of Annie; that Sallie was Mary Provoe's mother; that Sallie had another sister, Mrs. Konheep, of Sampson John's people, the daughter of Sampson's wife; that Klitumi was Annie's mother;

TESTIMONY OF PIKE BENN ON RE-RE-CROSS EXAMINATION.

That he is mistaken that Sallie had one child—there were three of them, Mrs. Provoe, a brother and a sister. Old Sallie was the mother of Mrs. Provoe; that Mrs. Provoe's father was John Kendall, a Boston man; that he is dead and does not know where he lived as the white man lives in a place a week and moves his camp and is hard to keep track of him; That Mrs. Provoe was born below Little Rock, Black River; that Mr. Provoe has some property down there and they live at Oakville; that Mrs. Provoe has lived in Oakville 15 or 16 years and before that lived at Black Creek, Little Rock;

That he knows Mary Provoe's family; that her husband was Dave Provoe and he died three or four years ago; that he came from the Victoria side, the French come from there—that his mother came from

Alaska, and the old man's father came from King George's side; that David Provoe said his mother was an Indian;

That he knows of the children of Mrs. Provoe by Dave Provoe, seven of them, one dead, one lives at Taholah, one Black Creek is named Dick Provoe, Bill and Frank Provoe at Oakville, one at Moclips, one blind fellow at Elma—all live [539] in the State of Washington; that he does not know anything about the Nisqually Indians nor about the Cowlitz Indians.

TESTIMONY OF MARY FRANCIS PROVOE FOR PLAINTIFFS.

MARY FRANCIS PROVOE, being sworn, testified that she is 74 years old, that she is a half-breed Indian; that she lives on the Chehalis reservation near Oakville and has lived there for 25 years; that she is the mother of all the plaintiffs in this case (cause No. 309-E); that one of the plaintiffs, John died two years ago;

That she belongs to the Chehalis Indians; that she was born at Tumwater, and lived at or near Little Rock before going to Oakville; that she has never lived on the Nisqually Indian reservation; that she was never there; that she has no relatives that were ever allotted on the Nisqually reservation; that is, not that she knows of; that she applied for allotment for herself and her children on the Quinaielt reservation; that she made the application but does not remember how long ago; that they went to Taholah approximately 12 years ago; that she and her husband and her daughter Mrs. Spencer, went to Taholah; that Mr. Johnson, the Indian Agent was

there; that he called all the Indians in; they all raised their hands to vote, every one of them; that Mr. Johnson wrote her a letter and asked her to come down to that meeting, he called it a council, and they went before the council of Taholah people, there were many there, does not know how many, but the room was large and was full of Indians; that they were the first ones presented before the council and Mr. Johnson told them if there was anyone to the contrary to put up their hands, and they all voted favorably for her; that they went down to Taholah, went down to see Mr. Johnson and he told them to [540] go down and have the Agent get the Indians together and see what they could do—does not remember the Agent's name; after that he said they changed the law and Mr. Johnson would have to be there and count the votes himself; he told us to go on that day and we went; that they appeared before the council to be recognized by the tribe, to be allotted land; that she represented her whole family; that her husband and daughter were with her.

Stipulated that the names of all the plaintiffs in Cause No. 309-E were voted upon or passed upon at that time.

That she was married to David Provoe and that she was married only once; that her husband, David Provoe, was born on Cowlitz Prairie; that he was a half-breed Indian; that his mother came from Stikine, Alaska; that her husband's father was a Frenchman who worked for the Hudson Bay people; that her husband was half Stikine and half French; that she

has a marriage certificate, but does not remember what year she was married to David Provoe.

Marriage certificate showing marriage of David Provoe and Mary Francis Provoe in Thurston County, January 24, 1870 exhibited in Court, and marriage conceded by defendant.

That David Provoe, her husband, was a member of the Cowlitz tribe of Indians, he was adopted into the tribe; that she was married only once and the plaintiffs named herein are their children; that she has three nieces allotted on the Quinaielt reservation —Mrs. Frank Gill, Mrs. Katie Thomas and Fannie— cannot remember her last name, it being French; that these allotments were made probably twelve years ago; that Lafayette died three days after he got his paper; that he was a full-blooded brother; that these allottees just named are nieces and nephews; that she does not know how Lafayette Kindred came to be adopted into the [541] Quinaielt tribe and to be allotted on that reservation; that she never received notice of any other or later council meeting at Taholah or the Quinaielt reservation which again passed upon her and her children; that she did not receive any communications from any official of the Indian Department at Taholah that she knows of, in 1918; that after the meeting was held, but she does not know how long after, they heard that another council meeting was held nine or ten years ago and they heard that their names had been withdrawn from or taken off the roll; that the decision of the council of 1912 had been done away with by a subsequent council; that they heard that five or six years ago and that

was the first time they heard of it; that until then, they thought they were on the Quinaielt reservation roll;

That in regard to her being from the Nisqually tribe, her mother was a full-blooded Indian born and raised at Tumwater; that her mother was never listed on or classified or lived on the Nisqually reservation; that she does not know whether or not she is listed on the Chehalis or the Quainelt census roll;

That beside some nieces and nephew and her brother, she has a first cousin allotted on the Quinaielt reservation and she is Sampson John's wife; that Sampson John's wife and her mother were sisters; that she has associated with her cousin some; that two or three times a year her cousin comes up and has dinner and stays overnight with them but she has not come this last year because she has been sick and before that she came once in a while; that they are on friendly terms and Mrs. Sampson John recognizes the witness as a relative and there has never been any question about that;

That she (the witness) does not know anything about [542] her ancestry back of her mother; that she does not know much of her grandparents except that they are from the Black River country, the Black River runs into the Chehalis River at Oakville; that her grandmother's name was Hoquin;

That her (the witness) mother's name was Sallie, a full-blooded Indian; that Annie was the daughter of her mother's sister whom they called Eliza; that Mrs. Sampson John's mother's name was Maria; that

she does not know whether Eliza and Klitumi are one and the same;

That she lives on the Chehalis reservation and that her neighbor there is Pike Benn, and the next one is Dave Benn; that there is one white family who bought a place and lives near them—that is Mrs. Sampson John's mother's place;

That neither she nor her children have ever been allotted land on the Chehalis reservation; that she does not know whether it was an Indian reservation at any time; that she does not know that they ever had a school there; they had an Indian school on the prairie for a while, but not at Oakville, a school where just Indians went to, it was near Peter Heck's place near Oakville; that her children were too old to go to school; they went to the public school at Little Rock; that she does not know if they had an Indian school there when she moved to Oakville, but they did afterwards.

TESTIMONY OF MARY FRANCIS PROVOE ON CROSS EXAMINATION.

That she thought she was recognized by the Quinaielts after she had attended the council meeting some 15 years ago; that she went for the purpose of being recognized, not adopted; that she had not been recognized by that tribe prior to that time; that she said she had been recognized before that time, but Mr. Johnson said it was necessary to go and have it done over again, so they went back then; [543]

That she does not know, and never heard them say whether the nieces and relatives that were allotted on

the Quinaielt reservation, were adopted into the Quinaielt tribe.

That her daughter Isabelle Ramey lives wherever she can get work and is living in town now; that she lived in Canada for some time a good while ago, until they burned out; that her husband was renting a farm and farming there;

That none of her family, or cousins, have received any money from the Nisqually tribe of Indians; that so far as she knows Mrs. Sampson Johns did not receive any money from the Nisqually tribe; that she does not know if any members of her family or relatives received any money from the Puyallup tribe of Indians; that she thinks it was in 1912 that she went to the Quinaielt reservation to that council meeting, it was while she lived at Little Rock; that now she believes she belongs to the Upper Chehalis Indians.

TESTIMONY OF W. B. SAMS RECALLED FOR PLAINTIFFS.

W. B. SAMS, being sworn, testified, that he knows William Garfield, a witness in several cases herein; that William Garfield claims his father was born at Cosmopolis but he is a Quinaielt Indian, of the Oiaht band, born and brought up to be a Quinaielt Indian;

That after checking up the census rolls of the Nisqually, Snokomish and other Indian tribes he does not think the Provoe family appears on any of the rolls—neither Chehalis or Nisqually; that he has never seen them if they are on the Nisqually roll;

That possibly the reason their names do not appear on any census roll is that they did not live on the reservation much; lived in Little Rock, outside of

the [544] reservation and would be what is termed "unattached Indians"; that as it does not show them to be in Oakville for some time, they would not be enrolled unless they were considered as members of that tribe; that these census rolls are prepared once a year; that the rule formerly was that where they had an employee, like during Johnson's administration, they report any changes; if any particular family was not on the list and was not living among the Indians, they would not be reported; sometimes people were put on who were not entitled to be put on, simply because they were living there and for that reason the rolls were sometimes inaccurate; some Indians are on two rolls for the reason they live for a while on one reservation, and then move to another reservation and are put on the roll there; that he has known of the Provoes since he has been Agent as they have been coming to see him occasionally to try to get themselves on the roll; that they were not put on the roll by him because he did not consider that they were entitled to go on the roll; because they lived in the villages and towns and he did not know that they lived among the Indians.

TESTIMONY OF W. B. SAMS ON CROSS EXAMINATION.

That in order to be on the census roll they have to be a member of the tribe and live with or close to it; that so far as he is advised these people did not live with any tribe; that in his jurisdiction he never found them in any reservation; that the roll now handed in by him is a separate census roll of the

Chehalis Indians that is made up each year, from 1905 up the present time; [545]

Census roll not admitted in evidence, but admitted by the plaintiffs that is shows, as previously testified by this witness, that a separate roll, census roll, was kept each year for the Chehalis tribe alone.

That this separate roll included only the Upper Chehalis tribe as that is the only one that is left.

TESTIMONY OF W. B. SAMS ON REDIRECT EXAMINATION.

That he has not gone over this census roll just above described, carefully; that he goes over it occasionally for the purpose of looking up something; that, as stated, this Upper Chehalis roll apparently starts in the year 1906 taken by Harry F. Listum, the Indian Agent, and presumably are brought down to the year 1927; that none of the names of the Halbert family appear on the Upper Chehalis roll.

Conceded by the plaintiffs and agreed to, that this roll above referred to, is the census roll kept of the Upper Chehalis tribe, kept as a separate and distinct tribe.

That there is no separate roll of the Lower Chehalis, that he simply enrolled the Lower Chehalis Indians with the Quinaielts.

TESTIMONY OF W. B. SAMS ON RECROSS EXAMINATION.

That the Indian Agency at Hoquiam, where he is, keeps census rolls of the Snoquamish tribe of Hood's Canal; the _____ tribe, an island tribe near

Olympia on an Island in the Sound; the Nisqually tribes near Camp Lewis on the Nisqually River; Chehalis tribe of the Chehalis reservation near Oakville, and the Quinaielt and Quileutes, a roll of the Quileutes also, a separate roll.

Stipulated and agreed to that this testimony with regard to the census rolls kept by the Hoquiam Agency, may be taken as to all the cases consolidated herein. [546]

That Hoquiam is the headquarters for transaction of business with the Indians; that he does not claim these census rolls are absolutely accurate.

That the reason the Agency for these Indians is placed at Hoquiam is that while the Agency was located at Taholah, on the Quinaielt reservation, so many Indians had business with the Agency, they complained of the location because of the inconvenience to them to come up to Taholah and travel the beach, and it seemed to be more central to be located at Hoquiam to take care of all the Indians under the jurisdiction of that Agency; that is, under the jurisdiction of the Hoquiam Agency are the Quinaielts, the Quileutes, the Nisqually, and all the other tribes mentioned by him, as distinct units; that they are administered through the Hoquiam Agency, he having been appointed to act for those different tribes and is in charge of each one; that there are Indians who come to Hoquiam to his Agency there to transact business, from all these various bands and tribes, and the Quinaielt tribe is but one of them.

TESTIMONY OF W. B. SAMS ON RE-RE-DIRECT EXAMINATION.

That referring to the name of Rose Elizabeth Cultee whose name appears on the last census roll of the Upper Chehalis tribe, so-called 1927—he knows her; that she is allotted on the reservation, her father is an allotted member; that George Comenot is allotted on the Quinaielt reservation; and Lena Heck is allotted on the Quinaielt reservation by adoption; that Ben Kaygor (with note that he carried on the Quinaielt roll as Wesley) is not allotted on the Quinaielt reservation;

(In response to the Court's question; these are people on the Chehalis roll allotted on the Quinaielt reservation). [547]

That John Longfred is allotted on the Quinaielt by adoption; that Gertrude Parsons was adopted; that Maggie and Lawrence Petit were adopted; that Sarah Sickman was allotted on the Quinaielt, and that Mamie Smith was adopted and Nellie Walker was adopted.

TESTIMONY OF W. B. SAMS ON RE-RECROSS EXAMINATION.

That two or three children's names, whose fathers were members of the Quinaielt tribe and married in the Chehalis tribe, and the babies enrolled, are only carried on that census roll as a matter of information, it states they were allotted on the Quinaielt reservation.

That as regards that roll, when there is a number opposite the name, they are presumed to be members

of the tribe; when no number is opposite the name, the name is merely put down for information, to keep a directory of it, that the numbered names follows a recognized name, and the unnumbered names are of the family of recognized names.

TESTIMONY OF RAYMOND A. PROVOE FOR THE PLAINTIFFS.

RAYMOND A. PROVOE, being sworn, testified that he lives at Oakville, Chehalis reservation; that he is the son of Mary Francis Provoe and one of the plaintiffs herein; that his sister Laura M. Brown, lives at Black Lake, about three miles from Tumwater; that Will Provoe lives at Elma; Frank, at Oakville; Rose E. Garrard, at Chehalis, and Isabelle R. Ramey, his sister, in Tacoma now; she lives wherever she works; that John Provoe lives at Shelton and Sarah Spencer at Moclips;

That he has had association and affiliation with the Indians at Taholah; has been down to see them, and has been on their farm and they have been invited down several times; [548] at one fourth of July they went down and stayed a week, his father used to play a violin for dances there; that it was 10 or 11 years ago that they stayed over the 4th of July; that different Indians invited them down, Clarence and John; that he has not been down there very often since then and never really stayed more than one night;

That he does not know anything of his ancestors; he "kinda" understood he belonged to the Chehalis tribe and supposes it would be the Upper Chehalis.

TESTIMONY OF RAYMOND A. PROVOE ON CROSS EXAMINATION.

That he could not say for sure that it was 1912 that he went to Taholah; that he did not go down to Taholah at the time his mother went there to the council meeting; that he has not exactly ever requested adoption in the Quinaielt tribe; that they have mixed up with the Quinaielt tribe and rather recognized as one, have relations on the Quinaielt reservation; that his cousins, Kate Thomas, Mrs. Ida Gill, and Mrs. Sampson are allotted on the Quinaielt;

That he was born at Tumwater, or near there; that they moved from Tumwater when he was quite young and moved to Little Rock where they lived until he was about 14 and then came back to the Chehalis reservation; that he could not tell what tribe of Indians is closest to Tumwater, or Olympia; that he does not know where the Nisqually band of Indians lived; that he never exactly knew anything of the Nisqually Indians; that he is not married, and does day labor.

TESTIMONY OF SARAH SPENCER FOR THE PLAINTIFFS.

SARAH SPENCER, being sworn, testified, that she is 47 years old, and lives at Moclips and has lived there for over 15 years; that Moclips is down on the other side of Hoquiam, [549] on the Taholah line; right on the line of the Taholah reservation; that she is the daughter of Mary Francis Provoe and one of the Plaintiffs in this case; and a sister to Laura Brown, John W., Frank M., William A., and Ray-

mond A. Provoe, and Rosa H. Garrard and Isabelle R. Ramey;

That they allege they belong to the Chehalis Indians; that she lived at Oakville for 8 years before going to Mocl[illegible]; that that is right on the line of the reservation; that she has friends on the Taholah reservation who come to see her and she goes to Taholah, to Marie Sampson and John and Charley Strong's folks; that she knows the Jackson family there; that they are friendly, their lots adjoin each other—Cleve Jackson and Anna Jackson and Cleve's mother too; that they call her an Indian—that she supposes she is Chehalis and Cowlitz—half degree.

TESTIMONY OF SARAH SPENCER ON CROSS EXAMINATION.

That she was born at Tumwater and could not say how many years she lived there, must have been 9 or 10 years, when they moved to Little Rock, which is not on a reservation; that they moved from Little Rock to Oakville; that she is married and has no children; that her husband is a white man who works in the logging camps.

TESTIMONY OF DAN SECENA FOR THE PLAINTIFFS.

DAN SECENA, being sworn, testified that he is past 70 years old and lives on the Chehalis reservation near Oakville; that he is a Siwash Indian; a full-blooded Indian; that the white men called them Upper Chehalis but they call themselves Satsops; that his father's name was Secena, an Upper Chehalis Indian and before the white settlers came and before

they had a reservation, they lived on Mountain Prairie; that they [550] called themselves Satsops, not Upper Chehalis; that his mother was Annie, half Satsop and half Humptulip, they are the Lower Chehalis tribe; that he does not know where his mother was born; that she died 16 years ago as an old woman, but could not tell her age, older than he is now; does not want to guess at her age when she died, but she was part Humptulip and part Satsop, her father being Satsop, that her father lived at the mouth of the Satsop where it empties into the Chehalis River;

That his mother's mother was Humptulip and lived on the Humptulip River most of her life;

That before the white people settled, their diet was salmon, deer, dry mackerel and beaver meat; that his people were fish eaters, and now the Upper Chehalis has the various runs of salmon the year round; that before the white people came and they learned about nets, they speared the fish, and still spear them, they fish in the river down to the Satsop where it is rather shallow;

That he knows William or Billy, Garfield, and has since he was a little fellow, knew his father, and does not remember ever seeing his grandfather; that before the reservation was started, the Garfields lived at Copalis, 9 miles south of Moclips, between Moclips and Oiahts, on or near the Quinaielt, on the north side of Gray's Harbor;

That he knows Mary Francis Provoe, who lives at Oakville, on the Chehalis River reservation; that he knows her father was a white man named John Kendall, and her mother an Indian named Huklea;

that Huklea's father was a Black River Indian, and so Huklea was a Black River Indian too; that he knows the name Sallie, and was mistaken—that it is Sallie who was Mrs. Provoe's mother, and Huklea was Sallie's mother, and Sallie's father was Old Kumkane, a [551] member of the Black River band, and Sallie was a full-blooded Indian, Sallie's daughter married a white man, Kindred, and they had a daughter, Mary Provoe.

Admitted by Defendant that his testimony as to the brothers and sisters of Mary Francis Provoe will be as that already given, admitted that this witness will testify that Mary Francis Provoe had a brother Lafayette Kindred, son of Sallie, a allotted on the Quinaielt reservation, and that Lafayetter had three children also allotted on the Quinaielt reservation.

TESTIMONY OF DAN SECENA ON CROSS EXAMINATION.

That he knows the Nisqually Indians well; that their homes were along both sides of the Nisqually River down at what is called Camp Lewis, they came from everywhere and have disbanded now;

That as far as they could spear the fish on the Chehalis was as far down as the Satsop—the Satsop is tidewater and there one cannot spear salmon; that they speared their fish; that the Chehalis Indians lived on deer meat; that deer was thick all over and no trick to kill them; they hunted and fished and were as good at one as the other, because there was plenty of fish and of deer in the old times; they did not have horses all the time, but later they had horses.

TESTIMONY OF DAN SECENA ON RE-DIRECT EXAMINATION.

That he does not know how the Lower Chehalis caught their fish; that since the white people came, the Indians all fish by nets and have been for quite a while.

Plaintiffs rest in 309-E. [552]

TESTIMONY OF CHARLES E. ROBLIN FOR DEFENDANT.

CHARLES E. ROBLIN, being sworn, testified that he is acquainted with the records at the Hoquiam Indian Agency; but that his investigation into the records has not been made to determine the original tribes from which the Indians came who were allotted on the Quinaielt reservation, but were checked by him very carefully, as to the authorized adoptions; and he is very familiar with that;

That as he remembers the counsel for plaintiff's earlier request, what was wanted by him, was documentary evidence for adoption and that he has it in Court with him;

That the documentary evidence shows that after he started his work as Allotting Agent on the Quinaielt reservation in April, 1925, he collected from the records in the Taholah reservation Agency at Hoquiam, all the letters of approvals of adoptions, or denials of adoptions in one file, and this is the file, taken from the official files of the Taholah Agency at Hoquiam, and that it contains the names asked about in the morning testimony. (Chehalis

Indians on the Chehalis census rolls, allotted on the Quinaielt reservation.)

That he does not think the names of Rose Elizabeth Cultee and George Comenot appear at all on the Chehalis roll as *member* of the Chehalis tribe, they have no numbers and are not put down as part of the Upper Chehalis tribe, not so carried on the Chehalis tribal records; (that even though it is submitted that their names are on the Upper Chehalis rolls, 'it is not in evidence'—by the Court).

Defendant's Exhibit No. A-4, census rolls of the various tribes of Indians as kept at the Quinaielt Agency, admitted in evidence. [553]

That the name of Lena Heck, wife of Peter Heck, appears on that census roll, with no explanation.

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION.

That according to those records, Ben Kaygar was never adopted, his name is not on that roll as a member of the tribe; that if that is the Upper Chehalis roll, counsel is referring to, No. 29 before his name is the number by which it was carried on the preceding roll; that the numbers in the first column is the number always, on the preceding roll; the second column gives the current roll number, the third column the remarks, the fourth column the name; in the instance of Ben Kaygar, No. 29 appears in the first column, indicating it the number by which it was carried on the preceding roll, the second column being blank, indicates he is not carried as a member and is therefore not given a current number,

the third column "carried on the Quinaielt census as Wesley."

That the records show that John Longfred was adopted by the tribe, adoption approved August 30, 1909; Gertrude Parsons was adopted, adoption approved September 28, 1910, and there is a record of that; Lawrence and Blanche Petit adopted, adoption approved September 29, 1926; that the names of Nancy Beckwith Secena, or Nancy Beckwith is not on the record, nor that of Sarah Sickman; that Mamie and April Smith were adopted at the council meeting, June 26, 1925, adoption approved September 29, 1926; that the Indians of the Quinaielt reservation passed on those two; Nellie Walker has been adopted twice, under two names, in 1910, adoption approved September 28, 1910. [554]

TESTIMONY OF CHARLES E. ROBLIN ON DIRECT EXAMINATION.

That the name of Lafayette Kindred does not appear as an allottee on the Quinaielt reservation; that he was never allotted; that Mary Francis, Frank M. Provoe, Rosa H. Garrard, Isabelle R. Rainey and Raymond A. Provoe, were presented to the council twice; in April, 1912, they were presented the first time and the tribe took favorable action; that action was never approved by the Secretary of the Interior, and the same cases were referred to him (the witness) in September, 1916, with instructions to again present them to the tribe; at the meeting held on December 18, 19, and 20, 1918, they were presented and the tribe took unfavorable action, and he recommended that the applications be not approved, and

they were denied by the Secretary of the Interior on November 13, 1919.

Under his instructions it was his duty to make a study of the family history of this Provoe family and his investigation showed; that David Provoe, then living, made application to him (the witness) on behalf of himself, his wife, and children and several grandchildren, not now in Court, for allotment; that the best information he could get was that David Provoe's mother was a Stikine Indian, from the Stikine district of south Alaska and British Columbia, who had been brought into this country and tribally adopted under the old custom of the Cowlitz tribe, and amalgamated and became a member of the Cowlitz tribe; that David was born from a marriage contracted in Cowlitz country; and was always considered and recognized as a Cowlitz Indian; that the information given him at that time as to Mrs. Provoe's family history—Mary Francis Provoe's history, was that the belonged to the Nisqually tribe, and [555] that made the children, part Cowlitz by adoption, and part Nisqually; that his instructions were to report all the Indians in Western Washington that he found who had any claim against the Government and who were not enrolled at any Agency, and the name of the Provoe family was among the 3000 reported, and that he listed them as belonging to the Cowlitz; that he never found the names of the Provoe family on any rolls and he examined the rolls from all the agencies and subagencies in Washington;

That he has made allotments on other reservations than in this district; that as regards the policy of the

Government in dealing with individual Indians, or the tribes, would state that the policy has been to induce Indians to leave their tribal camps and assume habits and customs of civilized life, and one method was to segregate the tribal property and place it in the individual ownership of the members of the tribe, but it has always been recognized that the tribal property was the property of the tribe and the distribution of that tribal property was a pro-rata distribution of the tribal property to the individual members of the tribe; the largest allotment he ever made to any individual was 1046 acres, as a result of the policy explained.

TESTIMONY OF CHARLES E. ROBLIN ON CROSS EXAMINATION—CONTINUED.

That the members of the Provoe family did not receive any notice of the meeting of the council held in 1918 at which their names were stricken from the list of Indians.

Witness excused. [556]

THE COURT: Is it your position that before the approval of their adoption by the Secretary, they would be entitled to any notice or are you asking that as explanatory of their conduct?

MR. ELLIOTT: In 1912 they were approved by all the council and, apparently, that stayed intact until Mr. Roblin came down there and held another council and I asked him if they received notice so they could have an opportunity to come down there.

THE COURT: You are merely asking it as explanatory of the conduct and interest of the witness and not having legal effect?

MR. ELLIOTT: The legal significance, also, in 1912, the Indians were allowed to come before the council, appeared in person; in 1918 none of them were there—if any, a very few—the Indians struck them out; they did not have them before them—they had been voted on and recognized and adopted and in 1918, at the council held by Mr. Roblin, there were some people down at Taholah and I asked him if these people got any notice of that meeting.

THE COURT: If the approval of the Secretary is a prerequisite of an adoption, then the matter was just like a case in court that has not been concluded?

Mr. ELLIOTT: Probably that is true. They are people who needed adoption to get in.

THE COURT: In the former case, Chief Taholah testified certain proceedings were necessary for tribal recognition and he over and over again said they did not need to be adopted.

MR. ROWLAND: That is the point exactly. (Further argument) Your recollection of the Chief's testimony is consistent with ours. [557]

THE COURT: I am not saying he said everybody there did not need adoption, but he testified, as I recall, as regarding particular ones interested in the former suits or the ancestors of those interested in former suits that he said did not need adoption by members of the tribe. (Further argument.)

MR. ELLIOTT: In the subsequent meeting in 1918, I wanted to know if these people had notice of that?

TESTIMONY OF CHARLES E. ROBLIN ON REDIRECT EXAMINATION.

That he was very particular not to notify the members of the Provoe family of that meeting, because the council held in 1912 had been very severely criticized because of the manner in which it had been held, that being one of the reasons the Secretary of the Interior refused to approve it—it was a hurrah-hooray council attended by a great many people seeking adoption and a great deal of enthusiasm was engendered and the Indians of the Quinaielt reservation voted to take in 557 members, which was almost as many as were already enrolled. His instructions were to secure from members of the Quinaielt reservation, information as to whether or not they were entitled to adoption and enrollment; to carry that out, he spent nearly 20 months making investigations in Western Washington, traveling to every part of Western Washington district and interviewing Indians, securing affidavits and evidence from about 3000 of them, including the 557 who had been adopted in 1912; his instructions were then to present all that evidence to the Quinaielt council and get from the members of the council their opinion as to whether or not these people were entitled; consequntly his business was not with the applicants, but [558] with the Quinaielt reservation Indians, who were entitled to pass upon the application, and notice of the council meeting in 1918 was printed extensively detailing the business for which called, and posted to all members on the Quinaielt reservation rolls, but not to the applicants for adoption.

TESTIMONY OF CHARLES E. ROBLIN ON RECROSS EXAMINATION.

That aboue 750 Indians have been allotted on the Quinaielt reservation since 1912; that he considers 500 Indians recognized in one big council meeting would be a large number to so recognized.

THE COURT: I did not understand that it was a part of your instructions not to notify the petitioners or those asking for adoption but you thought that was the best way to do it?

THE WITNESS: Yes.

Q. Then, when this council was held, after they had passed on these names, these persons were not notified of that council?

THE COURT: You have said that twice.

A. I have no knowledge as to whether they were notified on the action taken by that council or not.

TESTIMONY OF WILLIAM MASON FOR THE DEFENDANT.

WILLIAM MASON, being sworn, testified that he is the Chief of the Quinaielt tribe of Indians; that the meeting of the tribes at which a large number of people were adopted, at Taholah, in 1912, was while his father was alive; that when the people came there asking for allotments it was the outsiders that raised their hands, not the original Quinaielts; that the Bay Center people promised [559] them that if there was anything going on at Quinaielt, they would be there and help, and this Elliott bunch, he did not say he was going to adopt the children—Elliott just said "just myself—you help me I don't want to put my children in." That Elliott said he didn't want his

children to because "too much white." That the reason he stated the last time he wanted the Elliotts to be members of the Quinaielt tribe was because they told him that they would not ask for their children and Elliott told Johnson that too, that he would not ask for his children to get in.

TESTIMONY OF WILLIAM MASON ON CROSS EXAMINATION

That Elliott did not ask to get his children in when he held up his hand for the Elliotts at a prior council of 1912; that of course, they voted for Driscoll, because Driscoll belonged to the Quinaielts, his mother and his grandfather were Quinaielts; that he cannot speak for the 1912 meeting because his father was there; his father was alive then and it was his father who acted on it at that meeting, (not the witness).

TESTIMONY OF WILLIAM MASON ON REDIRECT EXAMINATION.

That he does not consider these Provoe people who have been here and testified—Mary Francis Provoe and her children—members of the Quinaielt tribe, but members of the Cowlitz tribe.

TESTIMONY OF WILLIAM GARFIELD FOR THE DEFENDANT.

WILLIAM GARFIELD, being sworn, testified that his father lived all his life time in Taholah; that as he (witness' father) was the only man that could talk jargon Chinook, he was to do the talking for the whole tribes on [560] the Pacific; that the Indians all talked to John Garfield; that his grandfather was

born at Copalis and made his home in Copalis, and his real grandfather too, lived in Taholah; that he is placed as a Chief of the Quinaielts, with Waukeenas and Billy Mason; that Copalis, where his grandfather was born, was part of the land the Quinaielt Indians originally had which they gave away for the Quinaielt reservation. That the Upper Chehalis Indians fished with spears, they did not have nets in those days; that before the white people came the Lower Chehalis also used spears and hooks with long poles; and the Quinaielts fished that way; that is the difference between the way the Upper Chehalis fished and the Quinaielts, before the white people came. That the Upper Chehalis people did not fish on the ocean at all, but in the shallow places way up on the river;

That he does not know the Provoe family; never saw them before; supposes they belong to the Cowlitz tribe; that they have not been around with the Quinaielt reservation Indians;

As regards the baseball team of Taholah; that Archie Pellard says he ran; that that fact does not make him a Quinaielt Indian just because he is the boss of the team; Max Hudson ran the Taholah team a couple of times but that didn't make Max a Quinaielt; he is allotted there because he is a Quileute; the several men built for the Indians in Taholah, and the Cosmopolis team played baseball at Taholah, but that did not make them Quinaielts and the Taholah team went to Neah Bay, which is also all Indians, but that didn't make them Neah Bay Indians;

Q. Do you know whether there is a difference between the way people fished around Shoalwater Bay

and the way the Quinaielts fished down there? [561]

A. In the early days?

Q. Yes.

A. They use a hook, a long pole and feel around the harbor and hook the sturgeon.

Q. At Shoalwater Bay?

A. Yes, and the same way the Quinaielt. I used to fish that way, myself, with a long pole and I would fill a canoe in the night time.

TESTIMONY OF SAMPSON JOHNS FOR DEFENDANT.

Harry Shale sworn as interpreter.

SAMPSON JOHNS, being sworn, testified that his wife is a first cousin of Mrs. Provoe's mother; that his wife came from near Tumwater; that she was a half-breed Indian from some tribe that lived there; does not know the tribal name; that his wife has applied to the Puyallup tribe for money settlement, as she is related by blood to the Puyallup tribe; that he thinks his wife belongs to the Tumwater Indians.

TESTIMONY OF SAMPSON JOHNS FOR DEFENDANT ON CROSS EXAMINATION.

That Tumwater is about a mile and half above Olympia; that he does not know where the Deschutes River is; that his wife is one of the Allottees of the Quinaielt reservation through him by marriage and she is allotted there through marriage; that his wife has visited the Provoes at Oakville and he generally goes with her; that he sometimes stays over night; that

he considers them as his friends because they are his wife's cousins;

Admitted by Defendant that they are cousins.

[562]

That he considers them as Indians; that they live in Oakville not like Indians, but like citizens of the United States; that his wife weaves baskets, but he has never seen these women weave baskets; that sometimes they visit the Provoes as often as three times in one summer, and other summers, once; the longest he stayed was two nights in their home;

TESTIMONY OF SAMPSON JOHNS ON RE-DIRECT EXAMINATION.

That his wife was not adopted into the Quinaielt tribe;

That since he has been here as a witness he has heard the Elliott people say they are related by blood to the Quinaielts; that he would like to know where they got their information; that he is well acquainted with Mary Ducheney, the grandmother of the Elliotts, and from her own testimony she told him entirely different from what has been told in Court; that with his father and mother, they often made visits to Mrs. Ducheney's house and Mrs. Ducheney stated that she is related to a person by the name of Hotkos who was one of the leading people of the Lower Chehalis; that Mary Ducheney was a half-breed, half-Indian and half French and was then married to a man named Kelly, as Ducheney was dead; that Ducheney was her first husband.

TESTIMONY OF HARRY SHALE FOR DEFENDANT.

HARRY SHALE, being sworn, testified, that he does not know Mary Francis Provoe and her family; that he would not be safe in saying he has ever seen them before; that they are not members of nor associated with the Quinaielts; that they he does not know to what tribe they belong; that speaking of the Pete, Smith Hayden families—Maggie Smith—so often brought up at this trial, they are Chehalis. Her [563] father was John Smith, one of the leading men of the Chehalis tribe.

TESTIMONY OF HARRY SHALE ON CROSS EXAMINATION.

That the families just before mentioned are Upper Chehalis; that Maggie Smith's mother is first cousin to Chief Taholah, but she married over there; that before these young people could be recognized as members of the tribe, even though they are part blood Quinaielt, they had to go through a council meeting and they were adopted, and Maggie Smith's brother and his children, even though half Quinaielts were brought before the council and adopted before they had a right of allotment in that reservation; that John Hayden married a lady from Oakville, an Upper Chehalis, and Hayden's mother and people are Humptulips allotted on the Quinaielt reservation and that is how they are living there; and Nellie Walker, a sister, is also a Humptulip and related to the Quinaielts; John Hayden's mother and Nellie Walker were members of the Humptulips and related to the Quinaielt tribe; they are one of his close relatives.

There was considerable marriage between the Upper Chehalis and Quinaielt tribes.

TESTIMONY OF HARRY SHALE ON DIRECT EXAMINATION—Continuing

That he does not know that there is much difference in the methods of fishing between the Upper Chehalis and the Quinaielt tribes and the tribes of Gray's Harbor; that by tradition, the Upper Chehalis speared their fish, and fished with a sort of trap; that he saw that himself in the Black River; that there is a difference in the method of spearing in shallow and deep water, in deep water a pole 18 or 20 feet long, with a hook being used to feel around [564] for the fish and then hook them.

TESTIMONY OF HARRY SHALE ON CROSS EXAMINATION—Continuing.

That in fishing, the Quinaielts have traps for that purpose; nowadays the Upper River Indians coming to the bay shore, would have to fish with seines in deep water; that in going to the Upper River the Quinaielts would also have to spear, but they fish entirely different; when one learns to fish in the Quinaielt it is different than the process of fishing in the Upper Chehalis; they fish above high water; build a trap from one side to the other, put in posts every eight or ten feet apart and tie a pole about 3 or 4 inches in diameter to each one of the stakes; then they put two rows of that and take young growth of vine, maple, about a quarter inch in diameter and weave it together by cedar limbs about 16 inches wide to a section and sharpen the ends and

work that down to the ground from one side of the river to the other and then build a bed about six by twelve and place a trap or hook about 8 feet in diameter and in that way trap the fish; the Upper Chehalis used a little trap probably 12 feet long; we used that too.

TESTIMONY OF HARRY SHALE ON REDIRECT EXAMINATION.

That he does not believe the Upper Chehalis could fish on the ocean; they were born way up inland and his people were born out there on the ocean; that he, himself, went up as far as Bering Sea to use the spear and to spear fur seal; that he has helped to spear whale; that he believes it impossible for the inland Indian to spear a whale; The Upper Chehalis Indians are not considered coast Indians. [565]

TESTIMONY OF GEORGE CHARLEY FOR THE DEFENDANT.

GEORGE CHARLEY, being sworn, testified that he knows a little of the ancestry of Sampson Johns' wife; that she, is a half-breed; that this man Kumkane, they claimed in earlier testimony, that he was a Tumwater, but Tumwater is a little above Olympia and there is no such tribe that lived there; that the name Kumkane is of the Puyallup tribe; therefore, Mrs. Sampson Johns spoke the Puyallup language all together before she married Sampson Johns; that she is a Puyallup Indian; that the Upper Chehalis Indians never came below to fish on the Coast.

W. B. SAMS RECALLED BY PLAINTIFFS.

That the signature on the letter exhibited to him by counsel for the plaintiffs and said to be dated December 16, 1925, is the signature of Mr. Burke, Commissioner of Indian Affairs; that he, (the witness) received that letter as a part of his duties.

The letter in question was admitted with Defendants Exhibit No. A-14, being a part of that file.

That the file has the adoption papers in it and a great deal of other letters are filed in there that are not intended to be offered as evidence and that they are partly private.

Letter in question above then read, as follows:

"December 16, 1925, by Charles H. Burke, to William B. Sams, Agent, Taholah Agency, received at the Agency December 21, 1925, Taholah Indian School; on the stationery of the Department of the Interior; "Dear Mr. Sams: Receipt is acknowledged of your letter of November 19th, 1925, with reference to the rights of the children of Dick Jackson to enrollment with the Indians of the Quinaielt Reservation. [566] Comparison of your letter of November 19th with the previous report of November 2d, shows the report is not complete. However, as stated by you, the persons mentioned by Dick Jackson are his grandchildren, and all these children born subsequent to the mother's enrollment; you are authorized to place the names of Wilbur, Elizabeth and Isaac Jones on the tribal roll of the Quinaielt Indians, under Section 324, Indian regulations of 1904 and certify their names to the special allotting Agent for

allotments of land. Yours truly—:" (Witness continuing in testimony) the father was also adopted, *these* were afterwards born children and *place* on the roll; that he supposes the allotment instructions of 1904 are in the exhibits with the other case, and no objection being offered, they admit in evidence

Plaintiff's Exhibit No. 15, the adoption papers referred to, and the letter last above quoted to the Court, admitted in evidence.

All records in Defendant's Exhibit No. 14 and Plaintiff's Exhibit No. 15 submitted with understanding and agreement that before case is finally submitted some agreement may be reached toward copying the particular documents offered and admitted in evidence therein, that the files themselves may be returned to the Agency, being most important there.

TESTIMONY OF DAN SECENA, RECALLED AS A WITNESS IN REBUTTAL FOR THE PLAINTIFFS.

DAN SECENA, having been previously sworn, testified on direct examination, that the dividing line between the territory claimed by the Nisqually Indians and the Upper Chehalis tribes starts from three miles up the east side of the east side of the Chehalis town near Newaukin, cut across north, he doesn't know how many miles to the Shultz river and it is the line between the Chehalis and the Nisqually, [567] and it empties into the Tumwater. That the

old Indian from whom Mrs. Provoe descended lived on the Upper Chehalis side, up on Black River.

The Defendant herein prays that this, their Amended Proposed Statement of Evidence be settled, allowed and signed.

ANTHONY SAVAGE,
United States Attorney.

TOM DE WOLFE,
Assistant United States Attorney.

[Endorsed]: Lodged June 20, 1929.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 8, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [568]

United States District Court, Western District of Washington, Southern Division.

HILARY HALBERT, Jr., et al., No. 299-E,
RICHARD HALBERT, No. 300-E,
VERNON SIDNEY HALBERT, No. 301-E,
SIDNEY E. HALBERT, No. 302-E,
ARCHIE PELLARD, No. 306-E,
ROSA PEERS PICKERNOLL, et al., No. 307-E,
MARY FRANCIS PROVOE, et al., No. 309-E,
LULA M. ELLIOTT, et al., No. 312-E,
LIZZIE ROLFSON, et al., No. 314-E,
VIRGINIA WALKOWSKY, et al., No. 315-E,
MARY BARICHIO PETIT, et al., No. 320-E,
DEWEY BARICHIO, et al., No. 321-E,
EDNA MAY ELLIOTT, et al., No. 324-E,
CHARLES G. ELLIOTT, Jr., et al., No. 325-E,
AGNES RUBENS, et al., No. 326-E,

Plaintiffs.

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER APPROVING AMENDED STATEMENT OF EVIDENCE.

I, EDWARD E. CUSHMAN, Judge of the above entitled Court, and the Judge before whom the above entitled cases were tried, do hereby certify, the plaintiffs and the defendant having been represented by their respective counsel in open court, H. G. Rowland and Stuart A. Elliott for plaintiff and Thomas De Wolfe for defendant and they agreeing that the foregoing is a true and complete statement of all the evidence essential to the decision of the questions pre-

sented by the appeal of the defendant from the judgments and decrees entered herein against the defendant, and in favor of the plaintiffs; and I do hereby approve and certify the same as the statement of the evidence in the said matter for the purpose of said appeal, [569] and do hereby order that the same become a part of the record for the purpose of said appeal, and order further that all the original exhibits be transmitted to the Appellate Court, the same to be listed in a separate order.

Done in open court this 8th day of July, 1929.

[Signed] EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: O. K.

H. G. & DIX H. ROWLAND,
STUART H. ELLIOTT,
Attorneys for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 8, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [570]

United States District Court, Western District of Washington, Southern Division.

HILARY HALBERT, Jr., et al., No. 299-E,
RICHARD HALBERT, No. 300-E,
VERNON SIDNEY HALBERT, No. 301-E,
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EDNA MAY ELLIOTT, et al., No. 324-E,
CHARLES G. ELLIOTT, Jr., et al., No. 325-E,
AGNES RUBENS, et al., No. 326-E,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER.

Upon application of the plaintiff herein for an order listing the original exhibits to be transmitted by the clerk of the above entitled court to the Circuit Court of Appeals, both plaintiffs herein and defendant, having agreed herein upon said list of exhibits, and the Court being duly advised in the premises; NOW Therefore, it is hereby

ORDERED, that the following exhibits, to-wit:

Admitted for plaintiffs, numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15; and 10½.

Admitted for defendants, numbers A-1, A-2, A3 and A-4 in the above entitled action be, and they are hereby ordered to be transmitted by the Clerk of the above entitled Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, forthwith.

Done in open court this 8th day of July, 1929.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: O. K.

H. G. & DIX H. ROWLAND,
STUART H. ELLIOTT,
Attorneys for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 8, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [571]

United States District Court, Western District of Washington, Southern Division.

HILARY HALBERT, Jr., et al., No. 299-E,
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EDNA MAY ELLIOTT, et al., No. 324-E,
CHARLES G. ELLIOTT, Jr., et al., No. 325-E,
AGNES RUBENS, et al., No. 326-E,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER EXTENDING TIME FOR FILING RECORD ON APPEAL

Upon motion of the defendant herein, it is hereby

ORDERED in the above entitled actions that the defendant may have up to and including the 23rd day of September, 1929, in which to file its record on appeal herein in the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 8th day of July, 1929.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 8, 1929.

ED. M. LAKIN,
Clerk.
By E. Redmayne,
Deputy. [572]

United States District Court, Western District of Washington, Southern Division.

HILARY HALBERT, Jr., et al., No. 299-E,
RICHARD HALBERT, No. 300-E,
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CHARLES G. ELLIOTT, Jr., et al., No. 325-E,
AGNES RUBENS, et al., No. 326-E,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above Entitled Court:

YOU WILL PLEASE PREPARE Certified copy of transcript of record on appeal in the above entitled actions, making the same in one consolidated transcript, in accordance with the stipulation between counsel on file herein, and transmit said certified transcript of record on appeal to Paul P. O'Brien,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, forthwith, and include in said transcript the following:

1. Complaint in each case.
2. Answer in each case.
3. Reply, if any, in each case.
4. Decree in each case.
5. Memorandum Decision of the trial Court.
6. Amended statement of evidence as settled and approved by the Court. [573]
7. Petition for appeal in each case.
8. Order allowing appeal in each case.
9. Notice of appeal in each case.
10. Assignment of errors in each case.
11. Citation on appeal in each case.
12. The following exhibits which were admitted at the time of trial: For plaintiffs, numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, & 10½, the same being an extract from The Handbook of American Indians.

For defendants, numbers A-1, A-2, A3, and A-4.

13. Stipulation consolidating cases for purpose of appeal, and stipulating that one statement of evidence be sufficient.
14. All stipulations and orders extending time for filing record on appeal.
15. All stipulations and orders extending time for lodging or filing defendant's statement of evidence.
16. All of court's orders, either formal or by minute entry, continuing date for hearing on settlement of statement of evidence.
17. All orders extending term for purpose of settling and lodging statement of evidence.

18. This praecipe.

19. Order naming exhibits to be transmitted to Circuit Court of Appeals.

20. Order of July 8, 1929, extending time for filing record on appeal.

ANTHONY SAVAGE,
United States Attorney.

TOM DEWOLFE,
Assistant United States Attorney.

JOHN T. McCUTCHEON,
Assistant United States Attorney.

JAMES T. RAHILY,
Associate Counsel.

OK

STUART H. ELLIOTT,
H. G. & DIX H. ROWLAND,
Attorneys for Plaintiffs.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 8, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy. [574]

District Court of the United States, Western District of Washington.

No. 312, 299, 300, 301, 302, 306, 307, 309, 314, 315, 320, 321, 324, 325 and 326-E.

SIXTEEN INDIAN ALLOTMENT CASES,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

To the Clerk of the Above-Entitled Court:

You will please issue certified copy of "Docket entry of May 20, 1929, showing lodgment of defendant's original proposed statement of evidence," to be added to Transcript of Record on Appeal.

TOM DEWOLFE,
Assistant United States Attorney.

[Endorsed]: Received a copy of the within praecipe this 26th day of July, 1929.

STUART H. ELLIOTT,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, *Northern* Division, Jul. 27, 1929.

ED. M. LAKIN,
Clerk.

By E. Redmayne,
Deputy [575]

In the United States District Court for the Western District of Washington, *Northern* Division.

No. 299, 300, 301, 302, 306, 307, 309, 312, 314, 315, 320, 321, 324, 325, 326-E.

HILARY HALBERT, Jr., et al., and fourteen other cases,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CERTIFICATE OF CLERK OF U. S. DISTRICT COURT TO CONSOLIDATED CAUSES ON APPEAL.

United States of America,
Western District of Washington—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 576, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled causes as is required by the praecipe of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause to wit: [576]

Clerk's fees (Act of Feb. 11, 1925) for making record, certificate or return 1517 folios at 15c	$227.55
Certificate of Clerk to Transcript of Record, with seal	.50
Certificate of Clerk to Original exhibits with seal	.50
Total	$228.55

I hereby certify that the above cost for preparing and certifying record, amounting to $228.55 will be included as constructive charges against the United States in my quarterly account to the Government of fees and emoluments for the Quarter ending September 30, 1929.

I further certify that I hereto attach and herewith transmit the original citation issued in each of the respective causes.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 16th day of August, 1929.

[SEAL] ED. M. LAKIN,
Clerk, United States District Court, Western District of Washington.

By S. M. H. Cook,
Deputy. [577]

[Endorsed]: No. 5922. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Hilary Halbert, Jr., Dorothy Halbert Hubble, Mildred Halbert, a Minor, and Hilary H. Halbert, Guardian ad litem, Appellees, "and fourteen (14) other cases". Transcript of the Record. Upon Appeals from the United States District Court for the Western District of Washington, Southern Dvision.

Filed August 20, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,
Deputy Clerk.

No. 5922

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

HILARY HALBERT, JR., DOROTHY HALBERT HUBBLE, MILDRED HALBERT, a Minor, and HILARY H. HALBERT, Guardian ad litem,

Appellees,

"AND FOURTEEN (14) OTHER CASES."

Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

PROCEEDINGS HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

At a stated term, to wit, The October Term, A. D. 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the seventh day of November, in the year of our Lord one thousand nine hundred and twenty-nine. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, Circuit Judge; Honorable CURTIS D. WILBUR, Circuit Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above cause argued by Mr. Tom DeWolfe, Assistant United States Attorney, and by Mr. James T. Rahily, Attorney, Department of the Interior, counsel for the appellant, and by Messrs. H. G. Rowland and Stuart H. Elliott, counsel for the appellees, and submitted to the Court for consideration and decision.

At a stated term, to wit, The October Term, A. D. 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-fourth day of February,

in the year of our Lord one thousand nine hundred and thirty. Present: Honorable FRANK H. RUDKIN, Circuit Judge, Presiding; Honorable FRANK S. DIETRICH, Circuit Judge; Honorable CURTIS D. WILBUR, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF DECREES.

By direction of the Court, ORDERED that the typewritten opinions this day rendered by this court in the above cause be forthwith filed by the Clerk and that a decree be filed and recorded in each of the fifteen cases consolidated in above cause for hearing in accordance with the direction contained in said opinions.

United States Circuit Court of Appeals, Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

HILARY HALBERT, Jr., DOROTHY HALBERT HUBBLE, MILDRED HALBERT, a Minor, and HILARY H. HALBERT, Guardian Ad Litem,

Appellees,

AND ELEVEN (11) OTHER CASES.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

WILBUR, Circuit Judge.—Plaintiffs in these cases invoked the jurisdiction of the District Court on the ground that they were entitled to an allotment of lands in the Quinaielt Indian Reservation in the State of Washington, and that this right had been denied by the Secretary of the Interior. Congress has authorized such an action in such a case. 25 U. S. C. A., § 345; 28 Stat. L. 305, § 1; 31 Stat. L. 760, § 1. Fifteen cases were consolidated for trial and on appeal, several of the cases, Indians whose claims were related, were joined, so that the number of allotments involved is greater than the

number of cases. Appellees base their right to allotment upon certain treaties and statutes to which we will now refer.

In 1855–1856 a treaty was signed by Isaac I. Stevens, Governor and Superintendent of Indian Affairs, on behalf of the Government of the United States, and by certain head chiefs and sub chiefs of the Quinaielt and Quileute Tribes, and by a number of the Indians of these Tribes. In the caption of the treaty it is denominated an agreement and convention made and concluded between Isaac I. Stevens, Governor, etc., on the part of the United States, "and the undersigned chiefs, headmen, and delegates of the different tribes and bands of the Qui-nai-elt and Quil-leh-ute Indians, on the part of said tribes and bands, and duly authorized thereto by them." Article 1 of the treaty provides that said tribes and bands cede their right to the lands and country occupied by them which is described in the article, and according to the statement in the opinion of the Solicitor of the Department of the Interior dealing with the subject is said to embrace an area extending one hundred miles along the Pacific Coast from Cape Flattery to Grays Harbor and extending inland from twenty to thirty miles, a total area of between two and three thousand square miles. Article 2 of the treaty provides that a tract or tracts of lands sufficient for their wants, within the Territory of Washington (which then included the present State of Oregon) should be selected by the President and set apart for their exclusive use; and provided that "the said

tribes and bands agreed to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any lands not in the actual claim and occupation of citizens of the United States, and upon any lands claimed or occupied, if with the permission of the owner or claimant." Article 3 protected the Indians in the right of taking fish at the usual and accustomed grounds and stations in common with all citizens of the territory and of erecting temporary houses for the purpose of securing the same. Article 6 provided that the President might cause the land to be surveyed into lots and assigned to "such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable." (Senate Document Vol. 38, vol. 2, p. 719; 12 Stat. L. 971; Article 6 of the treaty with the Omahas (10 Stat. L. 1043), sec. 6, referred to in the foregoing treaty, provides in detail for the method of the allotment to single Indians and families and provides for forfeiture of the allotment in case the person or family to whom it is assigned should neglect or refuse to occupy and till or shall rove from place to place.

In 1887 Congress passed an act (24 Stat. 388, now 25 U. S. C. A., ch. 9, § 331 et seq.) providing for the allotment of lands by the President to indi-

vidual Indians located thereon. Section 1 thereof, now 25 U. S. C. A., § 331, provided:

> "In all cases where any tribe or band of Indians has been or shall be located upon any reservation created for their use by treaty stipulation, Act of Congress, or Executive order, the President shall be authorized to cause the same or any part thereof to be surveyed or resurveyed whenever in his opinion such reservation or any part may be advantageously utilized for agricultural or grazing purposes by such Indians, and to cause allotment to each Indian located thereon to be made in such area as in his opinion may be for their best interest not to exceed eighty acres of agricultural or one hundred and sixty acres of grazing land to any one Indian."

The section also contains the following proviso, "Provided further, that where a treaty or Act of Congress setting apart such reservation provides for allotments in severalty in quantity greater or less than that herein authorized, the President shall cause allotments on such reservations to be made in quantity as specified in such treaty or act. * * * But in such cases allotments may be made in quantity as specified herein with the consent of the Indians expressed in such manner as the President in his discretion may require." It will be observed that this section requires that the tribe or band of Indians be located upon the reservation and that the individual Indian seeking allotment

be located thereon. As was said by Judge Sanborn, speaking for the Circuit Court of Appeals for the Eighth Circuit, in Lemieux vs. United States, 15 Fed. (2d) 518, "No case has been cited, and we have been unable to find any which holds that a tribal Indian, living apart from the tribe and off the reservation, is entitled to an allotment under section 1 of the Act of 1887, and the language of that act seems to preclude such a holding." No one of the appellees resides upon the Quinaielt Reservation. This fact would justify and require the Secretary of the Interior to deny their applications for allotment under the general allotment law and would require a denial of their application by the District Court. Appellees, however, have based their claim upon a subsequent statute enacted by Congress March 4, 1911, with special reference to allotments upon the Quinaielt Indian Reservation. It is claimed that this statute applies to the appellees and obviates the necessity for residence. We will first consider whether or not this act obviates the necessity for residence upon the Reservation as a condition precedent to an allotment. This act is as follows:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to make allotments on the Quinaielt Reservation, Washington, under the provisions of the allotment laws of the United States, to all members of the Hoh, Quileute, Ozette, or

other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute Tribes in the treaty of July first, eighteen hundred and fifty-five, and January twenty-third, eighteen hundred and fifty-six, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservation set aside for these tribes: Provided, That the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after the allotments to the Indians thereon have been completed."

It is evident from the proviso above quoted that allotments were contemplated to be made to Indians who did not reside upon the Quinaielt Reservation, for it is provided that the allotments authorized by the act should be made from surplus lands "after the allotment to the Indians thereon have been completed." The appellees contend that this proviso altogether obviated the necessity for residence on the Quinaielt Indian Reservation. In order to determine the proper interpretation of this statute it will be necessary to consider certain facts disclosed by the record. Separate reservations had been set aside for the Hoh Indians, Quileute, the Ozettes and the Quits. The Hoh Indians were a band of Quinaielt Indians living near the mouth of the Hoh River on the west coast of Washington, having a population of sixty-two in 1905. The Quits, or Quaitso, or Quitz, were probably a part of the Quinaielt Tribe, living on the coast of Washington, north of the Quinaielts, numbering sixty-two

Indians in 1906. (See Hand Book of American Indians, Bureau of Ethnology, Bulletin 30, parts 1 and 2, published in 1910 by the Government under the description of "Quinaielt, Quileute, Quaitso and Hoh Indians.") On November 4, 1873, President Grant by Executive Order, set aside the Quinaielt Indian Reservation of three hundred fifty square miles, bounded on the west by the Pacific Ocean. That order, excluding the date and description of the reservation, is as follows:

> "In accordance with the provisions of the treaty with the Quinaielt and Quillehute Indians, concluded July 1, 1855, and January 25, 1856 (Stats. at Large, vol. 12, p. 971), and to provide for other Indians in that locality, it is hereby ordered that the following tract of country in Washington Territory (which tract includes the reserve selected by W. W. Miller, superintendent of Indian affairs for Washington Territory, and surveyed by A. C. Smith, under contract of September 16, 1861) be withdrawn from sale and set apart for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast," etc.

Under the general allotment act the Indians to whom this reservation was made and who resided thereon were entitled to allotments therefrom. Under the same law Quileute Indians residing upon the Quileute Reservation, Hoh Indians residing upon the Hoh Reservation, Quit Indians residing

upon the Quit Reservation, were entitled to allotments from these reservations specially set apart for their use, but these reservations were so small that it would be impossible to give each Indian residing thereon the acreage authorized by the general allotment law. By moving from these small reservations to the Quinaielt Reservation the Indians for whom this reservation was established would be entitled to an allotment under the general allotment law. The Act of March 4, 1911, *supra*, however, provided that the Indians described in the act "who may elect to take allotments on the Quinaielt Reservations, rather than on the reservations set aside for these tribes, should have an allotment made to them on the Quinaielt Indian Reservation." These allotments the Secretary was directed to make "under the provisions of the allotment laws of the United States." It is a general rule of law that a party is put to his election only when he has two inconsistent rights. In view of this fact it must be apparent that the Indians who were by this act given a right of election as to whether they would take an allotment upon the special reservation set apart for them or from the larger reservation, must have had a right to selection upon the smaller reservation. In order to have a right to selection upon a smaller reservation it is necessary that the individual be located thereon. The right given to such an Indian by the Act of March 4, 1911, *supra*, was the right to select an allotment upon the larger reservation without the necessity of residence on that reservation. The effect of this legislation then

is to declare a residence upon one of these smaller reservations equivalent of residence on the larger reservation.

If there is any doubt as to the correctness of the foregoing construction of the statute it is set at rest by the report of the Congressional Committee on the act when it was reported to Congress for adoption. This committee report (61st Congress, 3d Session, 1910–1911, House Reports Vol. 2, Miscellaneous 11, Report No. 2152, reported February 11, 1911), incorporated and was based upon a letter from R. A. Ballinger, Secretary of the Interior, to the Chairman of Indian Affairs of the United States Senate, dated February 18, 1910. This report is as follows:

"Department of the Interior,

"Washington, February 18, 1910.

"Sir: I have the honor to acknowledge the receipt, by your reference of February 3, 1910, of Senate bill 5269, Sixty-first Congress, second session, authorizing allotments on the Quinaielt Indian Reservation, in Washington, to members of the Hoh, Quileute, and Ozette Tribes of Indians.

"By executive order of November 4, 1873, in pursuance of the treaty of July 1, 1855 (12 Stat. L., 971), there was set aside and reserved for the use of the Quinaielt, Quileute, Hoh, and other tribes of fish-eating Indians of Washington approximately 220,000 acres of land.

"Article II of the treaty of 1855, *supra*, provided that it would be lawful for the members of the several tribes to reside upon any land not in the actual claim and possession of citizens of the United States for a period of one year pending their removal to the diminished reservation. The diminished reservation was not established until 1873, and a number of the Indians who had not removed thereto at that time continued to live on tracts outside of the reservation even after it was established.

"To protect these Indians in their holdings off the reservation, executive orders of February 19, 1889, and April 12 and September 11, 1893, set aside and reserved approximately 1 square mile each for the Quileute, Ozette, and Hoh tribes respectively. These small reservations are and have been occupied by the Indians in the form of villages and do not contain enough lands to provide allotments for all the Indians thereon. Members of these tribes who moved to and resided continuously on the Quinaielt Reservation were entitled to and received allotments there.

"The department is of the opinion, therefore, that those members of the Hoh, Ozette, and Quileute tribes who are residing on the separate reservations set aside for them should receive allotments on the Quinaielt Reservation,

and would be glad to see Senate bill 5269 enacted into law.

"Very respectfully,

"R. A. BALLINGER, Secretary.

"Hon. MOSES E. CLAPP,

"Chairman Committee on Indian Affairs, United States Senate."

We conclude that under the general allotment laws only those individual Indians who were living upon the Quinaielt Indian Reservation are entitled to an allotment; that this law has been modified by the Act of Congress March 4, 1911, *supra*, in so far as the Indian tribes therein designated are concerned, by substituting residence upon the particular reservation set apart for the particular tribe, at the election of the Indian, for residence upon the Quinaielt Reservation. As the appellees do not reside upon any reservation this construction precludes the ordering of an allotment by the court, unless the statutes expressly applicable to Indians of mixed blood make an exception to the general rule. (25 U. S. C. A., §184.) We do not understand that the appellees rely upon this statute (25 U. S. C. A. § 184; 30 Stat. L. 90, § 1) as applicable to most of the applicants for the reason that they are not children of an Indian woman and a white man, but they are grandchildren, and therefore do not come within the provisions of the statute. (Pape vs. United States, 19 Fed. (2d) 219; Oakes vs. United States, 172 Fed. 305.)

We have not overlooked the contention that the applicants, notwithstanding their small proportion

of Indian blood, are alleged to be Indians and this allegation seems to be admitted. They base their claim upon the fact that they have been enrolled or acknowledged or recognized as Indians. We find it unnecessary to discuss further the rights of the appellees based upon their Indian blood or tribal relations because of the fact that in any event, not being located upon the reservation, they are not entitled to an allotment.

The judgments are reversed in the following cases in which the following named appellees were plaintiffs in the court below:

No. 299–E, Hilary Halbert, Jr., Dorothy Halbert Hubble, and Mildred Halbert, a Minor, by Hilary Houghton Halbert, guardian *ad litem;*

No. 300–E, Rich Halbert, a Minor, by Fred P. Halbert, guardian *ad litem;*

No. 301–E, Vernon Sidney Halbert, a Minor, by Benjamin F. Halbert, guardian *ad litem;*

No. 302–E, Sidney E. Halbert, a Minor, by Sidney Seth Halbert, guardian *ad litem;*

No. 307–E, Rose Peers Pickernoll and Mable Peers White, and Amelia Peers Alden;

No. 312–E, Lulu M. Elliott, Sophie M. Elliott, Carolyn M. Elliott, Marion E. Elliott, Emma S. Elliott, and Norma C. Elliott, Minors, by J. H. Elliott, guardian *ad litem;*

No. 320–E, Mary Barichio Petit, and Norris Petit, Ellis A. Petit, Oscar Brignone, Minors, by Paul Petit, guardian *ad litem;*

No. 321–E, Dewey Barichio, and Leda E. Barichio, Romie D. Barichio, Andrew B. Barichio,

Minors, by Vinie Wilson Barichio, guardian *ad litem;*

No. 324–E, Edna May Elliott, Ruth G. Elliott, William H. Elliott, John G. Elliott, and Frank L. Elliott and Jewell M. Elliott by William A. Elliott, guardian *ad litem;*

No. 325–E, Chas. G. Elliott, Jr., Anna Marie Elliott, Henry Elliott, Ralph G. Elliott, and Frances Elliott, Minors, by Chas. G. Elliott, guardian *ad litem;*

No. 326–E, Agnes Rubens, Louise Henry Peterson, Mary Henry Hagen, Chris Henry, Jr., and Christine Henry and June Henry, Minors, by Louise E. Henry, guardian *ad litem.*

Case No. 306–E, in which Archie Pellard was the plaintiff in the court below, is reversed with leave to amend complaint to show, if it be true, that the appellee is entitled to an allotment as a son of a recognized member of the Quinaielt Tribe and of a white man.

[Endorsed]: Opinion. Filed Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

VIRGINIA WALKOWSKY et al.,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

WILBUR, Circuit Judge.—It is alleged that the plaintiffs are the children of Kate Walkowsky Weiss, who was a duly enrolled and allotted Indian of the Quinaielt Tribe of Indians; that the father of the children named Walkowsky was a white man named John Walkowsky, now deceased. The father of Edna Weiss, one of the appellees, was a white man named Robert Weiss, who married Kate Walkowsky after the death of her husband John Walkowsky.

Kate Walkowsky Weiss is an Indian woman born in 1874 on Shoalwater Bay on the Coast of Washington. Her mother was an Indian of the Wynooche band of the Lower Chehalis Indians, and her father was a full blooded Chinook Indian. Her tribal rights, however, would follow the father, a

Chinook Indian, rather than the mother, a Wynooche Indian. The right of Kate Walkowsky Weiss, the mother of the appellees, to an allotment, is not involved in this case as she has already been allotted lands on the Quinaielt Reservation. Eight of her children have also received allotments. These allotments to Kate Walkowsky Weiss and her eight children were based upon their adoption by the Quinaielt Indian Tribe. Three appellees, Virginia, Allen and Katherine Walkowsky, were born after the adoption of the mother by the Quinaielt Tribe and have not been adopted, but have been refused adoption by the tribe. The question then is as to their right to allotment upon the theory that their mother became a member of the Quinaielt Tribe by adoption, and that therefore they are children of a white man and an Indian woman recognized by the Quinaielt Indian Tribe, as required by 25 U. S. C. A., § 184. Appellees seem to be of the view that inasmuch as Kate Walkowsky Weiss was an Indian that she was an Indian by blood and not by adoption, within the meaning of the act in question. It is commented that the words "by blood" and not "by adoption" as used in the act have reference to the fact that a white person or a negro or a person of some race other than Indian might be adopted by an Indian Tribe and it is said that these persons would then be Indian by adoption although not such by blood, but where a woman is unquestionably of Indian blood, how, it is asked, can she become an Indian by adoption when as a matter of fact she is already

an Indian by blood? This contention overlooks the fact that we are dealing with the rights to tribal property and that an Indian woman who is not a member of the tribe is no more entitled to allotments on tribal lands than a white man or a negro. Plaintiffs have no right to an allotment under 25 U. S. C. A., § 184 as the children of a white man and an Indian woman recognized as a member of the Quinaielt Tribe; first, because she was not recognized as already a member of the tribe but was adopted into the tribe to make her a member. The children of an Indian woman, a member of a tribe by adoption, are expressly excluded from the allotment authorized by 25 U. S. C. A., § 184; second, she was not an "Indian woman" within the meaning of 25 U. S. C. A., § 184, but, in contradistinction, was herself a child of a white man and an Indian woman authorized as such, by that section, to participate in the tribal lands of her mother's tribe, the Chinooks. She took the status of the father, a white man, and it is only by reason of 25 U. S. C. A., § 184, *supra,* that she was entitled to participate in tribal lands of the mother's tribe, the Chinooks. Her right in the Quinaielt tribal lands was based, not upon her Indian blood, but upon an express adoption. She was not a member of the Quinaielt tribe by blood, but by adoption. The statute authorizing children of the half blood to participate in the tribal lands of the Indian mother, 25 U. S. C. A., § 184, *supra,* applies only to children of an Indian woman by blood and that means blood of the tribe whose lands are claimed by allotment

and not by adoption by that tribe. As was said in Pape vs. U. S., 19 Fed. (2d), 219, 220:

> " * * * That statute, although it conferred a right upon the children of an Indian woman whose condition brought her within the terms of the act, did not bestow such right upon children of marriages contracted after passage of the act, nor upon the children of a mother not recognized as one of the tribe at the time of her marriage or death. We find no authority to sustain the construction that, when an Indian woman married a white man after the act of 1897, and thereafter abandoned her tribal relations and adopted the customs and habits of civilized life, children born to her after such abandonment, who have never been recognized as members of the tribe to which the mother belonged, have the same rights as the mother would have had if she had been affiliated with the tribe at the time of her marriage." (See also Oakes vs. U. S., 172 Fed. 305.)

It is true that the mother did not become an Indian by adoption but she did become a member of the Quinaielt Tribe by adoption and therefore the right which she thereby secured was not extended to her children whose status otherwise was determined by her white father and not by that of the mother.

The decree is reversed.

[Endorsed]: Opinion. Filed Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

LIZZIE ROLFSON et al.,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

WILBUR, Circuit Judge.—It is alleged that the plaintiffs and appellees are part Indian blood of the Quinaielt Indian Tribe residing in Grays Harbor County; that plaintiffs have always been recognized as such by the Quinaielt Indians, that they belong to the Lower Chehalis branch of the Quinaielt Tribe, that said plaintiffs belong to and are associated with and affiliated with the associated bands and tribes of fish-eating Indians of the Pacific Coast and Western Washington. The Court awarded the allotments prayed for and thus, in effect, found that the plaintiffs were Lower Chehalis Indians. It appears from the evidence that the appellee, Lizzie

Rolfson, was born in 1870 of white father, and a Chehalis—Upper or Lower—Indian mother, on her father's homestead; that in 1887 she married a white man named Smith and that two plaintiffs, Alvin Smith and Eugene Smith, are her sons by this marriage. In 1903 she married another white man, and in 1907, after his death, married a third husband, a white man. In 1918 she made an application to the Quinaielt Indians for enrollment, together with her children and grandchildren, on the ground that she was a member of the Chehalis Tribe of Indians and also made application for adoption by the tribe. The application for adoption was refused and the refusal was approved by the Secretary of the Interior.

The children of Lizzie Rolfson are American citizens and not entitled to an allotment as Indians unless they were adopted by the tribe. (See companion case No. 315–E, Walkowsky vs. U. S.) Recognition of the Indian blood of the children, no matter how made, would not be the equivalent of an adoption. We are of opinion that the grandchildren of an Indian woman married to a white man, even though their father may be a white man and their mother thus of part Indian blood, are not included within the purview of 25 U. S. C. A., § 184, and that their rights, if any, in the tribal property must be by reason of their adoption by the tribe.

This leaves for consideration only the question of Lizzie Rolfson, the mother. Her application for recognition and for adoption in the Quinaielt Indian Tribe was rejected. If however, her mother

was a Lower Chehalis Indian, recognized as such, as required by 25 U. S. C. A., § 184, Lizzie Rolfson, as her child, by her husband, a white man, would be entitled to an allotment, as it is stipulated that Lower Chehalis Indians are entitled to allotment upon the Quinaielt Reservation. Lizzie Rolfson's mother lived with her white husband upon his homestead at the time of the birth of Lizzie Rolfson. The appellant's position is that if Lizzie Rolfson's mother "had been tribally recognized 'by blood' at the time of her death, then her daughter, Lizzie Rolfson, of white paternity, would in such event, have had rights in the property of the tribe that had so extended its recognition to her mother under the act of June 17, 1897. * * * " (25 U. S. C. A., § 184.) This position is undoubtedly sound. It appears from the memorandum opinion that the trial court was of the opinion that Lizzie Rolfson's mother was recognized as a member of the Chehalis Indian Tribe previous to her death by reason of her residence among, and her accepted association with, these Indians. We are not disposed to disturb the conclusion of the trial court. The rights of her children, as is held in the Halbert case filed herewith, do not come within the purview of 25 U. S. C. A., § 184, and unless they have been formally adopted by one of the tribes entitled to an allotment upon the Quinaielt Indian reservation, would not be entitled to an allotment thereon, and even in the case of such an adoption it would be essential that they be resident thereon at the time of their application.

Decree reversed as to all the appellees except Lizzie Rolfson, and it is affirmed as to her.

[Endorsed]: Opinion. Filed Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals, Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY FRANCES PROVOE et al.,

Appellees.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before RUDKIN, DIETRICH and WILBUR, Circuit Judges.

WILBUR, Circuit Judge.—This is a companion case to the case of United States vs. Halbert, and was submitted at the same time and upon the same record as the other companion cases. The decree awarded allotments to all the plaintiffs and the Government appeals. It is alleged in the complaint that the plaintiffs are, and at all times since their birth, have been persons of part Indian blood, over twenty-one years of age and members of the Quinaielt Tribe of Indians residing in the State of

Washington. By way of recital it is further stated in the complaint that Mary Frances Provoe, being a member of an associated and affiliated band of Indians of the Quinaielt Tribe, and a fish-eating Indian of the Pacific Coast and of Western Washington, is the mother of the plaintiffs, other than herself, and that her husband, the father of the other plaintiffs is an Indian by blood, although his tribe is not stated. It is also alleged that in 1912 a tribal counsel of the Quinaielt Tribe of Indians, meeting at Taholoh, Washington, recognized plaintiffs as belonging to and being a part of the Quinaielt Tribe of Indians. It was further alleged that in 1912 the plaintiffs applied for an allotment which was refused on the ground that no provision had been made for the allotting of timber lands. Thereafter, plaintiffs selected certain lands described in the complaint. The Secretary of the Interior had "neglected, refused and declined to allot the said plaintiffs the identical allotments or any allotments of the land upon the Quinaielt Indian Reservation whatsoever. That said denial and refusal of plaintiffs' rights to allotment was for no reason known to plaintiffs, but that such refusal and denial is arbitrary and without reason, and in no manner justified, and is a denial of a right of said plaintiffs," etc. The answer admits that the plaintiffs are of part Indian blood but denies that they are of the Quinaielt or Quileute Tribes. It is denied that they were recognized by the Quinaielt Indian Tribe as members thereof, it is admitted that the Secretary of the Interior has refused to make an

allotment of lands to the plaintiff. The decree contains no findings of fact but a memorandum opinion of the Trial Judge is found in the record.

In the appellees' brief it is stated that the undisputed testimony is that appellees "are Chehalis-Cowlitz blood, the father, David Provoe, being born on Cowlitz Prairie and the mother, Mary Frances Provoe, on the Upper Chehalis River."

With reference to the residence of the plaintiffs, appellees state in their brief, as follows:

> "The facts are that Mary Frances Provoe and Raymond Provoe live upon the Chehalis Reservation, an Indian community among Indian neighbors; Frank Provoe at Oakville, Chehalis Reservation; Laura M. Brown at Black Lake about where she was born, an Indian community; William Provoe at Elma, the dividing line between the territory of the Upper and Lower Chehalis; Sarah Spencer at Moclips on the border of the Quinaielt Reservation among Quinaielt Indians in an Indian settlement."

Mary Frances Provoe testified that she thought she belonged to the Upper Chehalis Indians. The investigation of the allotting agent, C. E. Roblin, who testified in the case, led him to the conclusion that David Provoe, the husband of Mary Frances Provoe and father of the other plaintiffs, was an Indian whose mother was a Stikin Indian from the Stikin District from Southern Alaska; that his father was a white man; that he was brought to the

Cowlitz District and adopted by the Cowlitz Tribe; that he married Mary Frances Provoe, who was born at Tumwater, near Olympia, of a white father and an Indian mother. The tribe of her mother is in dispute; appellants claim that she was of the Nisqually tribe, and plaintiff testified that her mother was from the Black River country. It thus appears that the father of Mary Frances Provoe was a white man and that the father of her husband was also a white man.

It appears from the memorandum opinion that the Trial Judge reached the conclusion that Mary Frances Provoe's father was a white man and her mother a Chehalis Indian; that her husband's father was French and his mother a Stikin Indian of Alaska adopted by the Cowlitz Tribe; that Mary Frances Provoe by her marriage in 1870 to David Provoe, a Cowlitz Indian by adoption, took his status and by her marriage became a Cowlitz, and their children should be classed as Cowlitz; that whether classed as Upper Chehalis or Cowlitz the plaintiffs are entitled to an allotment. The only justification for the allegation that the appellees are Quinaielt Indians, is the claim that they were recognized as such by a tribal meeting held in 1912. At that meeting appellees made formal application for adoption. They were adopted by the Indians but this adoption was disapproved by the Secretary of the Interior and therefore had no effect. Mitchell vs. U. S., 22 F. (2) 771. The foregoing statement will indicate how far the evidence and the opinion of the Court depart from the

allegations of the complaint and that the trial court based its decree, as it appears from the opinion, upon the conclusion that the plaintiffs were Cowlitz Indians and not Quinaielt Indians, as alleged in the complaint. Plaintiffs do not allege that they are Cowlitz Indians and it does not appear from the record that the Secretary of the Interior was ever asked to make an allotment to the plaintiffs because they were Cowlitz Indians. The complaint should state the facts upon which the action of the Court is sought with particularity and it should appear therefrom that the claim to an allotment presented to the Court theretofore had been presented to the Secretary of the Interior and has been denied by him. The Court has no authority to consider the question of allotment unless and until it has been denied by the Secretary. It is only because of his alleged error in denying the application that the Court is authorized and required to act. It was certainly not contemplated by this remedial legislation that where a claim had been made to the Secretary of the Interior for an allotment and had been denied by him that the Court should be called upon to consider an entirely separate and distinct claim as a basis for an allotment. In the case at bar the Court should not be called upon to determine whether Cowlitz Indians are entitled to participate in the allotment of lands in the Quinaielt Indian Reservation where the Secretary of the Interior has denied a claim based upon the allegation that the petitioners are Quinaielt Indians. Apparently this case was tried

below without any objection to the evidence adduced by the appellees. Witnesses were permitted to express their opinion as to the intention of Congress in passing the act of March 4, 1911 (36 Stat. L. 1345), and their opinion concerning the interpretation of the executive order of November 4, 1873, and evidence was also adduced as to the meaning placed by Indians residing upon the Quinaielt Indian Reservation upon the clause of the act of Congress of March 4, 1911, relating to the tribes therein referred to as affiliated with the Quinaielt and Quileute Tribes in the treaty of 1855–1856. Because of this situation, and because such point is not made on appeal, we will ignore the variance between the proof and the pleadings otherwise than by calling attention to the difficulties confronting this Court where such lax practice is permitted. We cannot act here upon the rule which on appeal gives weight to the determination of the Trial Court upon evidence adduced before him and upon the opportunity of the Judge to determine the weight and value of the evidence in cases of conflict where the witnesses appear before him, for it is at once apparent that the evidence is wholly at variance with the allegation of the complaint, and with the implied finding of the truth thereof. We proceed to consider the question as to whether or not under the evidence the plaintiffs are entitled to an allotment.

As has been pointed out in the companion case, U. S. vs. Halbert, the act of March 4, 1911 (36 Stat. L. 1345), excuses residence upon the Quinaielt

Reservation and substitutes therefor residence upon a reservation set apart for the particular tribe, in the case of the Quileute, Hoh and Ozette, and other tribes affiliated with the Quinaielt and Quileute Indians in the treaty of 1855–56. In the case under consideration Mary Frances Provoe and some of her children are living upon the Chehalis Reservation. If the Cowlitz or Upper Chehalis Indians are covered by the act of March 4, 1911 (*supra*), which substitutes residence upon the tribal reservation for residence upon the Quinaielt Reservation, at the election of the Indian (Halbert vs. United States, companion case), then the residence of those plaintiffs and appellees upon the Chehalis Reservation would justify an allotment upon the Quinaielt Reservation. The question then is whether or not the Cowlitz or Upper Chehalis Indians were affiliated with the Quinaielt and Quileute Tribes in the treaty of 1855–56, within the meaning of the act of March 4, 1911, *supra*.

The interpretation suggested for this phase of the act of March 4, 1911, *supra*, by the appellant is as follows: "* * * it seems clear that the tribes who were 'affiliated' in the treaty were those who signed the treaty, and those who were supporters of the treaty signers, in the accomplishment of treaty making and, conversely, that those tribes or bands of Indians who declined to participate as principals in the treaty making, including their adherents, were not 'affiliated' with the Quinaielts and the Quileutes in the treaty of 1855–56."

Appellants claim that the Chehalis and Cowlitz Indians declined to enter into the treaty at all.

The position of the appellees is that all of the tribes at Cosmopolis, Washington, in 1855, who engaged in the negotiations leading up to the signing of the treaty, are affiliated in the treaty within the meaning of the act of March 4, 1911, *supra*. These tribes include the Upper and Lower Chehalis, Chinook, Cowlitz, Hoh and Quit Indians, whose representatives were there present. If, therefore, the presence of the Upper and Lower Chehalis tribal representatives at Cosmopolis, in 1855, and their participation in the negotiations for a treaty brought them within the purview of the act of Congress as affiliating in the treaty with the tribes that signed it, the residence of such appellees as resided upon the Chehalis Reservation, is substituted for residence upon the Quinaielt Reservation (Halbert vs. United States, *supra*). We will now consider that question.

By the act of March 4, 1911, the Secretary of the Interior was authorized and directed to make allotments on the Quinaielt Reservation, Washington, under the provisions of the allotment laws of the United States, "to all members of the Hoh, Quileute, Osette, or other tribes of Indians in Washington who are affiliated with the Quinaielt and Quileute Tribes in the treaty of July 1, 1855, and January 23, 1856, and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes, pro-

vided that the allotments authorized herein shall be made from the surplus lands on the Quinaielt Reservation after the allotments to the Indians thereon have been completed." In view of the fact that the treaties referred to in this enactment were signed on the part of the Indians, by the head men and members of the Quinaielt and Quileute Tribes only it is obvious that the benefits of the enactment were not limited to these two tribes and that we must, if possible, place some construction upon the phrase, "or other tribes of Indians in Washington who are affiliated," etc. The general words "other tribes affiliated" in the statute are limited by the special words in the statute, naming particular tribes immediately proceeding the general phrase "other tribes," etc.; under the familiar rule of statutory construction of *ejusdem generis*, to other tribes related or affiliated, as the Hoh, Quileute and Ozette Tribes are, or were affiliated with the Quinaielt and Quileute Tribes (Hills vs. Joseph, 229 Fed. 865, 868, 869). The Hoh Indians were a band of Quileute Indians living at the mouth of the Hoh River, about fifteen miles suth of Lapush, the main seat of the tribe on the west coast of Washington. In 1905 they had a population of 62 (No. 1 Hand Book of American Indians, Bureau of Ethnology, p. 556, published in 1910). The Quits similarly were a subdivision of the Quinaielt Tribe. It would thus appear that the Quits were affiliated with the Quinaielt Indians in the same way that the Hoh Indians were affiliated with the Quileute Indians. That is to say, both the Hohs

and the Quits were tribes or bands of tribes signing the treaty and were by the terms of the treaty bound thereby. (See treaty quoted in Halbert vs. United States, *supra*, 12 Stat. L. 971.) The phrase in the statute, "other tribes affiliated," etc., is evidently applicable to the Quit Tribe and this fact gives sufficient meaning to the phrase to justify its use and satisfy its terms, even if there were no other tribe similarly affiliated with the Quinaielt and Quileute Tribes in the treaty and not specifically mentioned therein. The question then is, were the Upper Chehalis or Cowlitz Tribes affiliated with the Quinaielts and Quileutes in the treaty as the Hoh were affiliated. The condition and relation of the tribes at the time of the treaty was testified to by the witness Charles E. Roblin, special allotting agent of the Interior Department, as follows:

> "That the act of 1911 is the latest act having to do with the Quinaielt reservation as far as he knows; that from his best knowledge from a study of the Treaty, etc., the signators to the treaty of 1855–56 are the Chiefs, Headmen and delegates of the different bands and tribes of the Quinaielts and Quileute Indians in Western Washington; that in 1855–56 an agreement was reached (as previously testified) between representatives of the Government and of the tribes that met at Cosmopolis, but not signed, and later a few men of the tribe went somewhere and signed a paper purported to be a treaty; that without explanation that does not look so good; that the Chinooks, Cowlitz, Che-

halis, Quileutes and Quinaielts, Hohs and Queets were all at the meeting at Cosmopolis in 1855, and all associated in preliminary arrangements in making that Treaty; that history shows that the Chinooks, Cowlitz and Chehalis Indians refused to sign that treaty and that the treaty as finally drafted and signed was made at Olympia by the men whose names appear in this report of it; but that in Mr. Swan's book published in 1857, two years after the treaty, on page 345, an explanation of the failure of the Chinooks, Cowlitz and Chehalis Indians to sign that Treaty is given, being, briefly that they, the Chinooks, Cowlitz and Chehalis Indians, understood from the Governor that the reservation to be created for all parties would be located in the Quinaielt country, and they did not want to go there, because they were not friends, and if they (a Chinook leader speaking) went north among the other tribes they would fight and soon all be killed," and this same idea was expressed by all and repeated each day of the tribal council. So they tore up the treaty and refused to sign it. The statement as it appears on page 345 of Swan's report of that treaty in 'The Northwest Coast or Three Years' residence in Washington Territory' was an extract from the speech of one of the Chinook Chiefs and repeated by all."

If this is true it seems clear that as the Chinooks, Cowlitz and Chehalis Indians refused to sign the

treaty or be bound by its terms and particularly refused to live upon the reservation provided them in the treaty, that they cannot be said to be affiliated in the treaty in any true sense of the term "affiliated." Furthermore, the Cowlitz Tribe is defined in the Hand Book of American Indians, Vol. I, p. 355, House Documents, 59th Congress, 1st Session 61, as follows: "A Salish Tribe formerly on the river of the same name in s.w. Washington. Once numerous and powerful, they were said by Gibbs in 1953 to be insignificant, numbering with the Upper Chehalis, with whom they were mingled, not more than 165. About 1887 there were 127 on the Puyallup res., Wash. They are no longer known by this name, being evidently officially classed as Chehalis."

Moreover, it should be noted that there is no evidence as to what tribes were represented at the final meeting at Olympia, nearly six months after the Cosmopolis negotiations were had, other than the fact that the treaty was signed by the Quinaielt and Quileute Indians. If other tribes affiliated in the treaty at Cosmopolis by joining in the negotiations, they did not do so at Olympia. The meeting at Cosmopolis was to arrange a treaty for the cession of the lands of all the tribes there represented, extending as far south as the Columbia River, while the territory actually ceded in the treaty signed six months later at Olympia extended no further south than the ridge separating the Quinaielt and Chehalis River, which in the main did not cover the territory occupied by the Upper Chehalis, Chinook

and Cowlitz Tribes, and by that part of the Lower Chehalis Tribe around Grays Harbor, although it should be noted that the Solicitor General of the Interior Department referred to the division line as extending to Grays Harbor. (See statement quoted in Halbert vs. United States.) As we have indicated heretofore, those purporting to be bound by the terms of the treaty were the Quileute, Quinaielts and "tribes and bands" of these Indians which includes the Hohs and Quits and does not include the Chinooks, Chehalis or Cowlitz Indians which were independent tribes. In this connection it may be stated that the Department of the Interior had the allotting agent, Charles E. Roblin, call a meeting of the old members of the tribes to ascertain their understanding of what tribes were affiliated with the Quinaielts and Quileutes "in making the treaty" of 1855–56, *supra*. He testified with relation to that meeting as follows:

> "On December 12, 1919, he presided at such council with about 70 or 80 in attendance and quite a number of the old men told their recollection of what had been told them; this was all incorporated in a report to the Secretary of the Interior and eight or ten of the chief men of the tribe signed the statement; they stated the Indians affiliated with the Quinaielts and Quileute Indians in 1855 and 1856 Treaty were the Hohs, Queets and Humptulips, and specifically stated that the Chehalis Indians did not affiliate with them in making the treaty."

The Indians present were no doubt competent to give an opinion of the relationship of the Indian Tribes as a matter of pedigree but we do not wish to seem to subscribe to the doctrine that they were competent to interpret an act of Congress, because we consider their conclusions as to tribal relationships.

We conclude that the Chehalis Indians, both Upper and Lower, and the Cowlitz were not affiliated with the Quinaielt and Quileute Tribes in the treaty within the meaning of the Act of Congress of March 4, 1911, supra; that therefore, the residence of such of the plaintiffs in this case, as lived upon the Chehalis Reservation was not the equivalent of residence upon the Quinaielt Reservation, and that they are therefore not entitled to an allotment of land upon the Quinaielt Reservation as Indians of the Cowlitz or Chehalis Tribes, unless they reside thereon. We are not called upon to consider the case of a Humptulip Indian.

It remains to consider whether the plaintiffs in this case are entitled to an allotment in the Quinaielt Reservation which they may assert notwithstanding the fact that they neither live on the Quinaielt Indian Reservation or any other reservation set apart for a tribe affiliated in the treaty. The Indians for whom this reservation was set apart are designated in the executive order of November 4, 1873, as the Quinaielt, Quileute, Hoh, Quit and "other tribes of fish-eating Indians on the Pacific Coast" and in view of the phrase of the proclamation expressing a purpose "to provide for other In-

dians in that locality" the part of the Pacific Coast referred to is further limited to the locality.

Mary Frances Provoe is the daughter of a white man married to a Chehalis Indian (or Cowlitz). It was conceded by the Government in the court below that the Lower Chehalis Indians were entitled to allotments on the Quinaielt Indian Reservation. As we understand it this concession was made upon the theory that the Lower Chehalis Indians were fish-eating Indians on the Pacific Coast in that locality within the meaning of the order setting aside the reservation and thereby entitled to an allotment under the terms of the general allotment act. The Trial Court, in its memorandum opinion, declined to determine whether or not the mother of Mary Frances Provoe was an Upper or Lower Chehalis Indian upon the theory that in either event she was entitled to an allotment. As we have indidated, her right to an allotment under the general allotment law, as modified by 25 U. S. C. A., § 184, concerning the right of a child of an Indian mother and white father, which we think excuses residence in the reservation as a prerequisite to allotment in such cases, depends upon the question as to whether her mother was a recognized member of one of the tribes for which the Quinaielt Indian Reservation was set aside, and this depends in part upon the terms of the proclamation of November, 1873. While the evidence in the record would seem to indicate that Mary Frances Provoe was an Upper Chehalis, rather than a Lower Chehalis, Indian we feel that that question can be better determined by the

trial judge than by us, either upon the oral evidence already adduced before him or from such additional evidence as may be offered by the parties. For that reason we leave that question to be determined by the Trial Judge upon further proceedings not inconsistent with this opinion, nor do we wish to be understood as determining whether or not Upper Chehalis Indians are provided for by the proclamation.

It remains to now consider the rights of the appellees, who are children of Mary Frances Provoe, as a result of her marriage with David Provoe, by reason of their recognition by the Quinaielt Indians. They were not entitled to any interest in the tribal property by reason of their mother's Indian blood. Their rights, if any, are dependent upon the status of their father, who, it is claimed are adopted by the Cowlitz Indians although the son of a white man, or upon their own relation to the Quinaielt Indians. Mary Frances Provoe and the children, appellees, applied to a meeting of the Indians upon the Quinaielt Indian reservation for adoption. Their application was approved by the Indians in that meeting but this action was disapproved by the Secretary of the Interior. It is conceded that the consent or approval of the Secretary of the Interior is essential to a valid adoption (Mitchell vs. United States, 22 F. (2d) 771, *supra*); that assent having been withheld the adoption is ineffective for any purpose. Appellees, however, contend that the action of the Indian council, although futile as an adoption, was nevertheless

a recognition that they are Indians of the Quinaielt Tribe. This position cannot be sustained. If, in fact, they were not members of the Quinaielt Indian Tribe, the recognition of them, as such, could give them no rights unless that recognition amounted to an adoption. If we assume that they are members of the Cowlitz Indian Tribe, as the Trial Court held by reason of the adoption of their father by said tribe, they could not become members of the Quinaielt Tribe except by adoption by that tribe approved by the Secretary of the Interior. We find no basis on the record for an allotment on the Quinaielt Indian Reservation to the children of Mary Frances Provoe as Quinaielt Indians. If they have any just claim to an allotment not disclosed by the record, such claims should first be presented to the Secretary of the Interior, and if rejected by him may be presented to the District Court by petition, according to law. To permit such claims to be presented in the first instance the District Court, without presentation to and rejection by the Secretary of the Interior, would in the last analysis, throw a large part of the burden of the administration of Indian reservations upon the court rather than upon the executive officer charged therewith, and who, by reason of the long course of dealings with the Indian tribes, is familiar with the facts, and would be unauthorized by the legislation invoked as a basis for the jurisdiction of the District Court.

Decree reversed, and case remanded for further proceedings not inconsistent herewith.

[Endorsed]: Filed Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

HILARY HALBERT, Jr., DOROTHY HALBERT HUBBLE, MILDRED HALBERT, a Minor, and HILARY HALBERT, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

RICH HALBERT, a Minor, by FRED P. HALBERT, Guardian ad Litem,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,
Appellant,

vs.

VERNON SIDNEY HALBERT, a Minor, by BENJAMIN F. HALBERT, Guardian ad Litem,
Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,
Appellant,

vs.

SIDNEY E. HALBERT, a Minor, by SIDNEY SETH HALBERT, Guardian ad Litem,
Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

ARCHIE PELLARD,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed, and that this cause be and hereby is remanded to the said District Court with leave to amend complaint to show, if it be true, that the appellee is entitled to an allotment as a son of a recognized member of the Quinaielt tribe and of a white man.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

ROSE PEERS PICKERNOLL, MABEL PEERS WHITE and AMELIA PEERS ALDEN,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

LULA M. ELLIOTT, SOPHIE M. ELLIOTT, CAROLYN M. ELLIOTT, MARION E. ELLIOTT, EMMA S. ELLIOTT, and NORMA C. ELLIOTT, Minors, by J. H. ELLIOTT, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY BARICHIO PETIT, and NORRIS PETIT, ELLIS A. PETIT, OSCAR BRIGNONE, Minors, by PAUL PETIT, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

DEWEY BARICHIO and LEDA E. BARICHIO, ROMIE D. BARICHIO, ANDREW B. BARICHIO, Minors, by VINIE WILSON BARICHIO, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDNA MAY ELLIOTT, RUTH G. ELLIOTT, WILLIAM H. ELLIOTT, JOHN G. ELLIOTT, and FRANK L. ELLIOTT and JEWELL M. ELLIOTT, by WILLIAM A. ELLIOTT, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

CHAS. G. ELLIOTT, Jr., ANNA MARIE ELLIOTT, HENRY ELLIOTT, RALPH G. ELLIOTT, and FRANCES ELLIOTT, Minors, by CHAS. G. ELLIOTT, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

AGNES RUBENS, LOUISE HENRY PETERSON, MARY HENRY HAGEN, CHRIS HENRY, Jr., and CHRISTINE HENRY and JUNE HENRY, Minors, by LOUISE E. HENRY,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

VIRGINIA WALKOWSKY, ALVIN WALKOWSKY, CATHERINE WALKOWSKY and EDNA WEISS, Minors, by KATE WALKOWSKY WEISS, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

LIZZIE ROLFSON, ALVIN SMITH, EUGENE SMITH, JUANITA CHRISTOFFSON, and ROBERT ROLFSON, DONALD SMITH, VIVIAN FORDEN, Minors, by LIZZIE ROLFSON, Guardian ad Litem,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause as to all the appellees except Lizzie Rolfson be, and hereby is, reversed, and as to said appellee Lizzie Rolfson be, and hereby is, affirmed.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5922.

UNITED STATES OF AMERICA,

Appellant,

vs.

MARY FRANCIS PROVOE, LAURA M. BROWN, FRANK M. PROVOE, JOHN W. PROVOE, ROSA H. GARRARD, SARAH SPENCER, ISABELLE R. RAINEY, WILLIAM A. PROVOE, and RAYMOND A. PROVOE,

Appellees.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said District Court in this cause be, and hereby is, reversed, and that this cause be, and hereby is, remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

[Endorsed]: Decree. Filed and entered Feb. 24, 1930. Paul P. O'Brien, Clerk.

At a stated term, to wit, the October Term, A. D. 1929, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the thirty-first day of March, in the year of our Lord one thousand nine hundred and thirty. Present: Honorable FRANK S. DIETRICH, Circuit Judge, Presiding; Honorable CURTIS D. WILBUR, Circuit Judge; Honorable FRANK H. NORCROSS, District Judge.

[Title of Cause.]

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of all the appellees in the fifteen cases consolidated for hearing in above cause, excepting appellees Lizzie Rolfson and Archie Pellard, filed March 20, 1930, for a rehearing of above cause be, and hereby is, denied.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. H. G. Rowland, counsel for the appellees, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including May 31, 1930; and in the event the petition for a writ of certiorari to be made by the appellees herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANK S. DIETRICH,
United States Circuit Judge.

Dated: San Francisco, California, April 8, 1930.

[Endorsed]: Filed Apr. 8, 1930. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing six hundred and eighty-six (686) pages, numbered from and including 1 to and including 686, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of April, A. D. 1930.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 141

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 142

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 143

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 144

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is

granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 145

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 146

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 147

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 148

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 149

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 150

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 151

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified

copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 152

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 153

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 154

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

